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Annotated

2021 ADVANCE CODE SERVICE

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PREFACE

Use of Advance Code Service.

The 2021 Advance Code Service ensures that your Mississippi Code of 1972 Annotated is always as current as possible by providing Judicial Decision notes, Attorney General Opinions, Ethics Opinions, research references, and references to law review articles. The ACS may also include changes to statutory provisions, and editorial comments. It ships three times a year, in the period between annual Code supplement pamphlet shipments. Advance Code Service pamphlets are cumulative and may be discarded or recycled upon receipt of later pamphlets.

Format.

Material in the Advance Code Service follows the structure of the Mississippi Code of 1972 Annotated and should be used in conjunction with the Code and its 2020 Supplement.

Annotations.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

In addition, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

PREFACE

Information, suggestions, comments, and questions.

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THE CONSTITUTION OF THE STATE OF MISSISSIPPI

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44. – – Factors considered, speedy trial.
124. Right of accused to be heard.
142. Ineffectiveness of counsel – In general.
159. – – Different result or trial outcome, ineffectiveness of counsel.

39. Speedy trial – In general.

44. – – Factors considered, speedy trial.

Defendant's constitutional right to a speedy trial was not violated because defendant did not assert his right to a speedy trial properly as he only filed a motion to dismiss on the basis that his constitutional right to a speedy trial had been violated; and, although defendant argued that he actually was prejudiced because the delay allowed for the destruction of the police body-camera footage, defendant's attorney had time to request the body-camera footage before its destruction, and defendant failed to provide any proof that the footage actually contained exculpatory evidence. Kelly v. State, 305 So. 3d 1134, 2020 Miss. LEXIS 444 (Miss. 2020).

124. Right of accused to be heard.

Defendant was not denied the right to testify in defendant's own defense because the record did not demonstrate that defendant ever made defendant's desire to testify known to the trial court even after the court told defendant that defendant could, contrary to the advice of counsel. Ferguson v. State, 298 So. 3d 1030, 2019 Miss. App. LEXIS 600 (Miss. Ct. App. 2019), cert. denied, 299 So. 3d 793, 2020 Miss. LEXIS 311 (Miss. 2020).

142. Ineffectiveness of counsel – In general.

159. – – Different result or trial outcome, ineffectiveness of counsel.

Although defendant's trial counsel was deficient in moving ore tenus for judgment notwithstanding the verdict, but not making a post-trial motion for a new trial, defendant was not prejudiced by that omission because the verdicts were not contrary to the overwhelming weight of the evidence in that the victims identified defendant as the perpetrator of armed robbery and kidnaping and defendant admitted that defendant was near the crime scene at the time of the incident. Ivory v. State, 283 So. 3d 108, 2019 Miss. LEXIS 336 (Miss. 2019).

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§ 73. Veto of parts of appropriations bill.

JUDICIAL DECISIONS

3. Parts of bills subject to veto.

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ARTICLE 5.

EXECUTIVE.

Sec.

140. Election of Governor.
141. Repealed.
142. Repealed.
143. Repealed.

§ 140. Election of Governor.

The Governor of the state and all statewide elected officials shall be elected by the people in a general election to be held: on the first Tuesday after the first Monday of November 2023, and on the first Tuesday after the first Monday of November in every fourth year thereafter. The person receiving a majority of the number of votes cast in the election for these offices shall be declared elected. If no person receives a majority of the votes, then a runoff election shall be held under procedures prescribed by the Legislature in general law.

HISTORY: 1817 art IV § 2; 1832 art V § 2; 1869 art V § 2; Laws, 1982, ch. 621, eff January 28, 1983; Laws, 2020, ch. 2021, § I (see Editor's Note).

Editor's Note — House Concurrent Resolution 47 (Chapter 2021), 2020 Regular Session, amended § 140 of Article 5, Mississippi Constitution of 1890. HCR 47 was approved by a majority of the electors of Mississippi in the November 3, 2020, election.

Article 15, § 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise. The Secretary of State certified the November 3, 2020, election results on December 3, 2020.

Amendment Notes — The 2020 amendment rewrote the section to remove the requirement that a candidate for governor or statewide elected office receive the most votes in a majority of the state's House districts (the electoral vote requirement). See Editor's Note for effective date.

§ 141. Repealed.

Repealed by Laws of 2020, ch. 2021, § II. (See Editor's Notes for effective date.)

Editor's Note — Former § 141 required the House of Representatives to choose a governor from the two candidates who received the highest number of popular votes in the absence of electoral and popular vote majorities.

The repeal of § 141 of Article 5 of the Mississippi Constitution of 1890 was proposed by Laws of 2020, Chapter 2021 (House Concurrent Resolution No. 47), which was ratified by the electorate on November 3, 2020.

Article 15, § 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise. The Secretary of State certified the the November 3, 2020, election results on December 3, 2020.

§ 142. Repealed.

Repealed by Laws of 2020, ch. 2021, § III. (See Editor's Notes for effective date.)

Editor's Note — Former § 142 prohibited Legislators from receiving certain appointments from the Governor or any state officer if the Governor or state officer had been elected by the House of Representatives.

The repeal of § 142 of Article 5 of the Mississippi Constitution of 1890 was proposed by Laws of 2020, Chapter 2021 (House Concurrent Resolution No. 47), which was ratified by the electorate on November 3, 2020.

Article 15, § 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise. The Secretary of State certified the the November 3, 2020, election results on December 3, 2020.

§ 143. Repealed.

Repealed by Laws of 2020, ch. 2021, § IV. (See Editor's Notes for effective date.)

Editor's Note — Former § 143 provided that all other state officers would be elected at the same time, and in the same manner as provided for election of Governor.

The repeal of § 143 of Article 5 of the Mississippi Constitution of 1890 was proposed by Laws of 2020, Chapter 2021 (House Concurrent Resolution No. 47), which was ratified by the electorate on November 3, 2020.

Article 15, § 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise. The Secretary of State certified the the November 3, 2020, election results on December 3, 2020.

TITLE 11.

CIVIL PRACTICE AND PROCEDURE

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9. Immunity.

Automobile accident victim's claims in a negligence action against a county were barred by the weather exception when the victim sustained injuries as the victim drove a vehicle across a washout on a county road because county was immune for any breach of a duty to warn of the washout as the accident was caused solely by the effect on the use of streets and highways of a significant rain event that occurred. Smith v. Pike Cty., — So. 3d —, 2021 Miss. App. LEXIS 71 (Miss. Ct. App. Feb. 9, 2021).

TITLE 13.
EVIDENCE, PROCESS AND JURIES

CHAPTER 1.
EVIDENCE

IN GENERAL

§ 13-1-23. Presumption of death.

JUDICIAL DECISIONS

4. Rebuttal of presumption.

Chancery court properly denied a daughter's petition for the presumption of death of her father because the father had not been absent from or concealed himself in the state for seven years successively without being heard of since the record reflected that, while the father changed his name to "Morningstar" approximately three years earlier, his residence and his social security number remained the same, he was present at the hearing and testified, there was no indication in the record that the daughter attempted or requested to rebut Morningstar's testimony and was denied, she failed to explain what evidence disappeared or was defaced, and failed to explain how the chancery clerk's alleged actions prejudiced her case. In re Johnson, — So. 3d —, 2021 Miss. LEXIS 2 (Miss. Jan. 14, 2021).

TITLE 15.

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CHAPTER 1.

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§ 15-1-49. Limitations applicable to actions not otherwise specifically provided for.

JUDICIAL DECISIONS

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27. Running of limitation period, generally.
28. — Accrual of cause of action; miscellaneous.
29. — —Real property, deeds, etc.

27. Running of limitation period, generally.

28. — Accrual of cause of action; miscellaneous.

29. — —Real property, deeds, etc.

Grantor's claim for the value of the trees cut was not time-barred because the amended complaint adding the claim was filed within the three-year limitations period that began running when the timber was cut; the Mississippi catch-all limitations provision applied to the grantor's claim for actual damage for the timber cutting. Alexander v. Musgrove, — So. 3d —, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. Jan. 5, 2021).

TITLE 23.

ELECTIONS

CHAPTER 15.

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ARTICLE 29.

ELECTION CONTESTS.

SUBARTICLE B.

CONTESTS OF PRIMARY ELECTIONS.

§ 23-15-931. Issuance of subpoenas and summonses by circuit clerk prior to hearing; assistance by, and findings of, election commissioners; entry of judgment by trial judge.

JUDICIAL DECISIONS

1. In general.

Appellate court lacked subject matter jurisdiction to review whether a political candidate's residence was within the election district at the time of a primary election because the trial judge, with the election commissioners in attendance, dictated findings, without objection, that the candidate's residence was in the district and the question of whether the candidate met the residency requirement involved questions of fact. McQuirter v. Archie, — So. 3d —, 2020 Miss. LEXIS 507 (Miss. Dec. 17, 2020).

§ 23-15-933. Appeal from judgment; restrictions upon review of findings of fact.

JUDICIAL DECISIONS

1. In general.

Appellate court lacked subject matter jurisdiction to review whether a political candidate's residence was within the election district at the time of a primary election because the trial judge, with the election commissioners in attendance, dictated findings, without objection, that the candidate's residence was in the district and the question of whether the candidate met the residency requirement involved questions of fact. McQuirter v. Archie, — So. 3d —, 2020 Miss. LEXIS 507 (Miss. Dec. 17, 2020).

TITLE 25.

PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS

CHAPTER 11.

SOCIAL SECURITY AND PUBLIC EMPLOYEES' RETIREMENT AND DISABILITY BENEFITS

ARTICLE 3.

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§ 25-11-114. Retirement allowance for death before retirement or death or disability in line of duty.

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2. Causation.

Denial by the Public Employees' Retirement System of Mississippi of a terminated police officer's request for duty-related disability benefits—when the officer suffered from post-traumatic stress disorder following the fatal shooting of a suspect—was appropriate because the accident or traumatic event that caused the disorder did not also cause a physical injury to the officer that occurred in the line of duty. Carver v. Public Emples. Ret. Sys. of Miss., 306 So. 3d 694, 2020 Miss. LEXIS 483 (Miss. 2020).

TITLE 27.

TAXATION AND FINANCE

Chapter 7. Income Tax and Withholding. 27-7-1

CHAPTER 7.

INCOME TAX AND WITHHOLDING

Article 1. Income Tax. 27-7-1

ARTICLE 1.

INCOME TAX.

Sec.
27-7-15. Gross income defined.

§ 27-7-15. Gross income defined.

(1) For the purposes of this article, except as otherwise provided, the term "gross income" means and includes the income of a taxpayer derived from salaries, wages, fees or compensation for service, of whatever kind and in whatever form paid, including income from governmental agencies and subdivisions thereof; or from professions, vocations, trades, businesses, commerce or sales, or renting or dealing in property, or reacquired property; also from annuities, interest, rents, dividends, securities, insurance premiums, reinsurance premiums, considerations for supplemental insurance contracts, or the transaction of any business carried on for gain or profit, or gains, or profits, and income derived from any source whatever and in whatever form paid. The amount of all such items of income shall be included in the gross income for the taxable year in which received by the taxpayer. The amount by which an eligible employee's salary is reduced pursuant to a salary reduction agreement authorized under Section 25-17-5 shall be excluded from the term "gross income" within the meaning of this article.

(2) In determining gross income for the purpose of this section, the following, under regulations prescribed by the commissioner, shall be applicable:

(a) **Dealers in property.** Federal rules, regulations and revenue procedures shall be followed with respect to installment sales unless a transaction results in the shifting of income from inside the state to outside the state.

(b) **Casual sales of property.**

(i) Prior to January 1, 2001, federal rules, regulations and revenue procedures shall be followed with respect to installment sales except they shall be applied and administered as if H.R. 3594, the Installment Tax

Correction Act of 2000 of the 106th Congress, had not been enacted. This provision will generally affect taxpayers, reporting on the accrual method of accounting, entering into installment note agreements on or after December 17, 1999. Any gain or profit resulting from the casual sale of property will be recognized in the year of sale.

(ii) From and after January 1, 2001, federal rules, regulations and revenue procedures shall be followed with respect to installment sales except as provided in this subparagraph (ii). Gain or profit from the casual sale of property shall be recognized in the year of sale. When a taxpayer recognizes gain on the casual sale of property in which the gain is deferred for federal income tax purposes, a taxpayer may elect to defer the payment of tax resulting from the gain as allowed and to the extent provided under regulations prescribed by the commissioner. If the payment of the tax is made on a deferred basis, the tax shall be computed based on the applicable rate for the income reported in the year the payment is made. Except as otherwise provided in subparagraph (iii) of this paragraph (b), deferring the payment of the tax shall not affect the liability for the tax. If at any time the installment note is sold, contributed, transferred or disposed of in any manner and for any purpose by the original note holder, or the original note holder is merged, liquidated, dissolved or withdrawn from this state, then all deferred tax payments under this section shall immediately become due and payable.

(iii) If the selling price of the property is reduced by any alteration in the terms of an installment note, including default by the purchaser, the gain to be recognized is recomputed based on the adjusted selling price in the same manner as for federal income tax purposes. The tax on this amount, less the previously paid tax on the recognized gain, is payable over the period of the remaining installments. If the tax on the previously recognized gain has been paid in full to this state, the return on which the payment was made may be amended for this purpose only. The statute of limitations in Section 27-7-49 shall not bar an amended return for this purpose.

(c) **Reserves of insurance companies.** In the case of insurance companies, any amounts in excess of the legally required reserves shall be included as gross income.

(d) **Affiliated companies or persons.** As regards sales, exchanges or payments for services from one to another of affiliated companies or persons or under other circumstances where the relation between the buyer and seller is such that gross proceeds from the sale or the value of the exchange or the payment for services are not indicative of the true value of the subject matter of the sale, exchange or payment for services, the commissioner shall prescribe uniform and equitable rules for determining the true value of the gross income, gross sales, exchanges or payment for services, or require consolidated returns of affiliates.

(e) **Alimony and separate maintenance payments.** The federal rules, regulations and revenue procedures in determining the deductibility and taxability of alimony payments shall be followed in this state.

(f) **Reimbursement for expenses of moving.** There shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one (1) residence to another residence which is attributable to employment or self-employment.

(3) In the case of taxpayers other than residents, gross income includes gross income from sources within this state.

(4) The words "gross income" do not include the following items of income which shall be exempt from taxation under this article:

(a) The proceeds of life insurance policies and contracts paid upon the death of the insured. However, the income from the proceeds of such policies or contracts shall be included in the gross income.

(b) The amount received by the insured as a return of premium or premiums paid by him under life insurance policies, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract.

(c) The value of property acquired by gift, bequest, devise or descent, but the income from such property shall be included in the gross income.

(d) Interest upon the obligations of the United States or its possessions, or securities issued under the provisions of the Federal Farm Loan Act of 1916, or bonds issued by the War Finance Corporation, or obligations of the State of Mississippi or political subdivisions thereof.

(e) The amounts received through accident or health insurance as compensation for personal injuries or sickness, plus the amount of any damages received for such injuries or such sickness or injuries, or through the War Risk Insurance Act, or any law for the benefit or relief of injured or disabled members of the military or naval forces of the United States.

(f) Income received by any religious denomination or by any institution or trust for moral or mental improvements, religious, Bible, tract, charitable, benevolent, fraternal, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical or cemetery purposes or for two (2) or more of such purposes, if such income be used exclusively for carrying out one or more of such purposes.

(g) Income received by a domestic corporation which is "taxable in another state" as this term is defined in this article, derived from business activity conducted outside this state. Domestic corporations taxable both within and without the state shall determine Mississippi income on the same basis as provided for foreign corporations under the provisions of this article.

(h) In case of insurance companies, there shall be excluded from gross income such portion of actual premiums received from an individual policyholder as is paid back or credited to or treated as an abatement of premiums of such policyholder within the taxable year.

(i) Income from dividends that has already borne a tax as dividend income under the provisions of this article, when such dividends may be specifically identified in the possession of the recipient.

(j) Amounts paid by the United States to a person as added compensation for hazardous duty pay as a member of the Armed Forces of the United States in a combat zone designated by Executive Order of the President of the United States.

(k) Amounts received as retirement allowances, pensions, annuities or optional retirement allowances paid under the federal Social Security Act, the Railroad Retirement Act, the Federal Civil Service Retirement Act, or any other retirement system of the United States government, retirement allowances paid under the Mississippi Public Employees' Retirement System, Mississippi Highway Safety Patrol Retirement System or any other retirement system of the State of Mississippi or any political subdivision thereof. The exemption allowed under this paragraph (k) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(*l*) Amounts received as retirement allowances, pensions, annuities or optional retirement allowances paid by any public or governmental retirement system not designated in paragraph (k) or any private retirement system or plan of which the recipient was a member at any time during the period of his employment. Amounts received as a distribution under a Roth Individual Retirement Account shall be treated in the same manner as provided under the Internal Revenue Code of 1986, as amended. The exemption allowed under this paragraph (*l*) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(m) National Guard or Reserve Forces of the United States compensation not to exceed the aggregate sum of Five Thousand Dollars ($5,000.00) for any taxable year through the 2005 taxable year, and not to exceed the aggregate sum of Fifteen Thousand Dollars ($15,000.00) for any taxable year thereafter.

(n) Compensation received for active service as a member below the grade of commissioned officer and so much of the compensation as does not exceed the maximum enlisted amount received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such members of the Armed Forces (i) served in a combat zone as designated by Executive Order of the President of the United States or a qualified hazardous duty area as defined by federal law, or both; or (ii) was hospitalized as a result of wounds, disease or injury incurred while serving in such combat zone. For the purposes of this paragraph (n), the term "maximum enlisted amount" means and has the same definition as that term has in 26 USCS 112.

(o) The proceeds received from federal and state forestry incentive programs.

(p) The amount representing the difference between the increase of gross income derived from sales for export outside the United States as compared to the preceding tax year wherein gross income from export sales was highest, and the net increase in expenses attributable to such increased exports. In the absence of direct accounting, the ratio of net profits to total sales may be applied to the increase in export sales. This paragraph (p) shall

only apply to businesses located in this state engaging in the international export of Mississippi goods and services. Such goods or services shall have at least fifty percent (50%) of value added at a location in Mississippi.

(q) Amounts paid by the federal government for the construction of soil conservation systems as required by a conservation plan adopted pursuant to 16 USCS 3801 et seq.

(r) The amount deposited in a medical savings account, and any interest accrued thereon, that is a part of a medical savings account program as specified in the Medical Savings Account Act under Sections 71-9-1 through 71-9-9; provided, however, that any amount withdrawn from such account for purposes other than paying eligible medical expense or to procure health coverage shall be included in gross income.

(s) Amounts paid by the Mississippi Soil and Water Conservation Commission from the Mississippi Soil and Water Cost-Share Program for the installation of water quality best management practices.

(t) Dividends received by a holding corporation, as defined in Section 27-13-1, from a subsidiary corporation, as defined in Section 27-13-1.

(u) Interest, dividends, gains or income of any kind on any account in the Mississippi Affordable College Savings Trust Fund, as established in Sections 37-155-101 through 37-155-125, to the extent that such amounts remain on deposit in the MACS Trust Fund or are withdrawn pursuant to a qualified withdrawal, as defined in Section 37-155-105.

(v) Interest, dividends or gains accruing on the payments made pursuant to a prepaid tuition contract, as provided for in Section 37-155-17.

(w) Income resulting from transactions with a related member where the related member subject to tax under this chapter was required to, and did in fact, add back the expense of such transactions as required by Section 27-7-17(2). Under no circumstances may the exclusion from income exceed the deduction add-back of the related member, nor shall the exclusion apply to any income otherwise excluded under this chapter.

(x) Amounts that are subject to the tax levied pursuant to Section 27-7-901, and are paid to patrons by gaming establishments licensed under the Mississippi Gaming Control Act.

(y) Amounts that are subject to the tax levied pursuant to Section 27-7-903, and are paid to patrons by gaming establishments not licensed under the Mississippi Gaming Control Act.

(z) Interest, dividends, gains or income of any kind on any account in a qualified tuition program and amounts received as distributions under a qualified tuition program shall be treated in the same manner as provided under the United States Internal Revenue Code, as amended. For the purposes of this paragraph (z), the term "qualified tuition program" means and has the same definition as that term has in 26 USCS 529.

(aa) The amount deposited in a health savings account, and any interest accrued thereon, that is a part of a health savings account program as specified in the Health Savings Accounts Act created in Sections 83-62-1 through 83-62-9; however, any amount withdrawn from such account for

purposes other than paying qualified medical expenses or to procure health coverage shall be included in gross income, except as otherwise provided by Sections 83-62-7 and 83-62-9.

(bb) Amounts received as qualified disaster relief payments shall be treated in the same manner as provided under the United States Internal Revenue Code, as amended.

(cc) Amounts received as a "qualified Hurricane Katrina distribution" as defined in the United States Internal Revenue Code, as amended.

(dd) Amounts received by an individual which may be excluded from income as foreign earned income for federal income tax purposes.

(ee) Amounts received by a qualified individual, directly or indirectly, from an employer or nonprofit housing organization that are qualified housing expenses associated with an employer-assisted housing program. For purposes of this paragraph (ee):

(i) "Qualified individual" means any individual whose household income does not exceed one hundred twenty percent (120%) of the area median gross income (as defined by the United States Department of Housing and Urban Development), adjusted for household size, for the area in which the housing is located.

(ii) "Nonprofit housing organization" means an organization that is organized as a not-for-profit organization under the laws of this state or another state and has as one of its purposes:

1. Homeownership education or counseling;

2. The development of affordable housing; or

3. The development or administration of employer-assisted housing programs.

(iii) "Employer-assisted housing program" means a separate written plan of any employer (including, without limitation, tax-exempt organizations and public employers) for the exclusive benefit of the employer's employees to pay qualified housing expenses to assist the employer's employees in securing affordable housing.

(iv) "Qualified housing expenses" means:

1. With respect to rental assistance, an amount not to exceed Two Thousand Dollars ($2,000.00) paid for the purpose of assisting employees with security deposits and rental subsidies; and

2. With respect to homeownership assistance, an amount not to exceed the lesser of Ten Thousand Dollars ($10,000.00) or six percent (6%) of the purchase price of the employee's principal residence that is paid for the purpose of assisting employees with down payments, payment of closing costs, reduced interest mortgages, mortgage guarantee programs, mortgage forgiveness programs, equity contribution programs, or contributions to homebuyer education and/or homeownership counseling of eligible employees.

(ff) For the 2010 taxable year and any taxable year thereafter, amounts converted in accordance with the United States Internal Revenue Code, as amended, from a traditional Individual Retirement Account to a Roth

Individual Retirement Account. The exemption allowed under this paragraph (ff) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(gg) Amounts received for the performance of disaster or emergency-related work as defined in Section 27-113-5.

(hh) The amount deposited in a catastrophe savings account established under Sections 27-7-1001 through 27-7-1007, interest income earned on the catastrophe savings account, and distributions from the catastrophe savings account; however, any amount withdrawn from a catastrophe savings account for purposes other than paying qualified catastrophe expenses shall be included in gross income, except as otherwise provided by Sections 27-7-1001 through 27-7-1007.

(ii) Interest, dividends, gains or income of any kind on any account in the Mississippi Achieving a Better Life Experience (ABLE) Trust Fund, as established in Chapter 28, Title 43, to the extent that such amounts remain on deposit in the ABLE Trust Fund or are withdrawn pursuant to a qualified withdrawal, as defined in Section 43-28-11.

(jj) Subject to the limitations provided under Section 27-7-1103, amounts deposited into a first-time homebuyer savings account and any interest or other income earned attributable to an account and monies or funds withdrawn or distributed from an account for the payment of eligible costs by or on behalf of a qualified beneficiary; however, any monies or funds withdrawn or distributed from a first-time homebuyer savings account for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary shall be included in gross income. For the purpose of this paragraph (jj), the terms "first-time homebuyer savings account," "eligible costs" and "qualified beneficiary" mean and have the same definitions as such terms have in Section 27-7-1101.

(kk) Amounts paid by an agricultural disaster program as compensation to an agricultural producer, cattle farmer or cattle rancher who has suffered a loss as the result of a disaster or emergency, including, but not limited to, the following United States Department of Agriculture programs:

(i) Livestock Forage Disaster Program;

(ii) Livestock Indemnity Program;

(iii) Emergency Assistance for Livestock, Honey Bees and Farm-raised Fish Program;

(iv) Emergency Conservation Program;

(v) Noninsured Crop Disaster Assistance Program;

(vi) Pasture, Rangeland, Forage Pilot Insurance Program;

(vii) Annual Forage Pilot Program;

(viii) Livestock Risk Protection Insurance Program; and

(ix) Livestock Gross Margin Insurance Plan.

(*ll*) Amounts received as advances and/or grants under the federal Coronavirus Aid, Relief, and Economic Security Act.

(mm) Any and all cancelled indebtedness provided for under the Coronavirus Aid, Relief, and Economic Security Act.

(nn) Amounts received as payments under Section 27-3-85.

(oo) Amounts received as grants under the 2020 COVID-19 Mississippi Business Assistance Act.

(pp) Amounts received as grants under Section 57-1-521.

(5) Prisoners of war, missing in action-taxable status.

(a) **Members of the Armed Forces.** Gross income does not include compensation received for active service as a member of the Armed Forces of the United States for any month during any part of which such member is in a missing status, as defined in paragraph (d) of this subsection, during the Vietnam Conflict as a result of such conflict.

(b) **Civilian employees.** Gross income does not include compensation received for active service as an employee for any month during any part of which such employee is in a missing status during the Vietnam Conflict as a result of such conflict.

(c) **Period of conflict.** For the purpose of this subsection, the Vietnam Conflict began February 28, 1961, and ends on the date designated by the President by Executive Order as the date of the termination of combatant activities in Vietnam. For the purpose of this subsection, an individual is in a missing status as a result of the Vietnam Conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam. "Southeast Asia," as used in this paragraph, is defined to include Cambodia, Laos, Thailand and waters adjacent thereto.

(d) "Missing status" means the status of an employee or member of the Armed Forces who is in active service and is officially carried or determined to be absent in a status of (i) missing; (ii) missing in action; (iii) interned in a foreign country; (iv) captured, beleaguered or besieged by a hostile force; or (v) detained in a foreign country against his will; but does not include the status of an employee or member of the Armed Forces for a period during which he is officially determined to be absent from his post of duty without authority.

(e) "Active service" means active federal service by an employee or member of the Armed Forces of the United States in an active duty status.

(f) "Employee" means one who is a citizen or national of the United States or an alien admitted to the United States for permanent residence and is a resident of the State of Mississippi and is employed in or under a federal executive agency or department of the Armed Forces.

(g) "Compensation" means (i) basic pay; (ii) special pay; (iii) incentive pay; (iv) basic allowance for quarters; (v) basic allowance for subsistence; and (vi) station per diem allowances for not more than ninety (90) days.

(h) If refund or credit of any overpayment of tax for any taxable year resulting from the application of this subsection (5) is prevented by the operation of any law or rule of law, such refund or credit of such overpayment of tax may, nevertheless, be made or allowed if claim therefor is filed with the Department of Revenue within three (3) years after the date of the enactment of this subsection.

(i) The provisions of this subsection shall be effective for taxable years ending on or after February 28, 1961.

(6) A shareholder of an S corporation, as defined in Section 27-8-3(1)(g), shall take into account the income, loss, deduction or credit of the S corporation only to the extent provided in Section 27-8-7(2).

HISTORY: Codes, 1942, § 9220-08; Laws, 1934, ch. 120; Laws, 1936, ch. 151; Laws, 1940, ch. 123; Laws, 1942, chs. 125, 129; Laws, 1944, ch. 122; Laws, 1948, ch. 464, § 1; Laws, 1952, ch. 402, § 7; Laws, 1954, ch. 366; Laws, 1966, ch. 628, § 2; Laws, 1973, ch. 504, § 1; Laws, 1978, ch. 475, § 1; Laws, 1982, ch. 489, § 1; Laws, 1984, ch. 393, § 8; Laws, 1986, ch. 393, § 1; Laws, 1986, ch. 513, § 8; brought forward without change, Laws, 1987, ch. 345, § 8; Laws, 1987, ch. 423, § 1; Laws, 1990, ch. 523, § 5; Laws, 1993, ch. 377, § 1; Laws, 1993, ch. 456, § 13; Laws, 1993, ch. 523, § 1; Laws, 1994, ch. 468, § 6; Laws, 1997, ch. 606, § 8; Laws, 1998, ch. 448, § 1; Laws, 1999, ch. 446, § 1; Laws, 2000, ch. 473, § 16; Laws, 2001, ch. 452, § 2; Laws, 2001, ch. 586, § 2; Laws, 2002, ch. 516, § 2; Laws, 2003, ch. 319, § 2; Laws, 2004, ch. 500, § 1; Laws, 2005, ch. 443, § 1; Laws, 2005, ch. 484, § 6; Laws, 2005, 5th Ex Sess, ch. 22, § 1; Laws, 2006, ch. 497, § 1; Laws, 2007, ch. 443, § 1; Laws, 2008, ch. 489, § 1; Laws, 2009, ch. 349, § 1; Laws, 2010, ch. 430, § 1; Laws, 2015, ch. 420, § 6; Laws, 2015, ch. 457, § 5; Laws, 2017, ch. 350, § 15; Laws, 2017, ch. 376, § 3, eff from and after March 20, 2017; Laws, 2018, ch. 415, § 1, eff from and after January 1, 2018; Laws, 2020, ch. 421, § 1, eff from and after January 1, 2020; Laws, 2020, ch. 503, § 4, eff from and after January 1, 2020.

Editor's Notes — Laws of 2020, ch. 503, § 1, effective October 9, 2020, provides:

"SECTION 1. This act shall be known and may be cited as the 'Rental Assistance Grant Program.'"

Laws of 2020, ch. 503, § 5, effective January 1, 2020, provides:

"SECTION 5. Section 4 of this act shall take effect and be in force from and after January 1, 2020, and the remainder of this act shall take effect and be in force from and after its passage."

Amendment Notes — The first 2020 amendment (ch. 421), effective January 1, 2020, added (4)(*ll*) through (oo).

The second 2020 amendment (ch. 503), effective January 1, 2020, added (4)(pp).

CHAPTER 43.

AD VALOREM TAXES—NOTICE OF TAX SALE TO OWNERS AND LIENORS

§ 27-43-1. Notice to owners.

JUDICIAL DECISIONS

1. In general.

Because substantial credible evidence supported the finding that many of the requirements under the statute were not met, a 1998 tax deed was void, and a grantee was the rightful owner of the property and was entitled to statutory redemption notice with respect to the 1993 tax sale; the county chancery clerk admitted to numerous notice insufficiencies relating to the 1990 tax sale, including the chancery court's failure to notify the grantee or her agent and publish notice of the tax sale. Alex-

ander v. Musgrove, — So. 3d —, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. Jan. 5, 2021).

§ 27-43-3. Notice to owners; service of notice; fees.

JUDICIAL DECISIONS

1. In general.

It did not appear that any discussion was had regarding a purchaser's damages after the chancery court set aside a tax sale for lack of notice, and thus, the purchaser, had not been given an opportunity to present proof of his damages; because the tax sale had been declared void, the purchaser was entitled to a hearing to present proof of his damages. Thoden v. Hallford, — So. 3d —, 2021 Miss. LEXIS 21 (Miss. Feb. 4, 2021).

It was proper to void a tax sale for lack of notice, and the case was remanded for the purpose of a hearing on damages because the purchaser was entitled to a refund of his tax sale purchase money paid, and he was entitled to a lien on the land for the amount of what he paid at the tax sale with interest on that amount. Thoden v. Hallford, — So. 3d —, 2021 Miss. LEXIS 21 (Miss. Feb. 4, 2021).

Because substantial credible evidence supported the finding that many of the requirements under the statute were not met, a 1998 tax deed was void, and a grantee was the rightful owner of the property and was entitled to statutory redemption notice with respect to the 1993 tax sale; the county chancery clerk admitted to numerous notice insufficiencies relating to the 1990 tax sale, including the chancery court's failure to notify the grantee or her agent and publish notice of the tax sale. Alexander v. Musgrove, — So. 3d —, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. Jan. 5, 2021).

Because the chancery court's determination that the first tax deed was void was never challenged on appeal, the issue was waived; a purchaser waived any challenge to the chancery court's determination that the 1993 tax deed was void, including the theory that the grantee was not entitled to statutory notice of redemption with respect to the 1990 tax sale. Alexander v. Musgrove, — So. 3d —, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. Jan. 5, 2021).

CHAPTER 45.

AD VALOREM TAXES—REDEMPTION OF LAND SOLD FOR TAXES

§ 27-45-3. Persons who may redeem land.

JUDICIAL DECISIONS

1. In general.

Statute was inapplicable to the case because the case did not involve a redemption; the taxpayer received no notice that the redemption period on her property would soon expire, and thus, she never made any attempt to redeem the property. Thoden v. Hallford, — So. 3d —, 2021 Miss. LEXIS 21 (Miss. Feb. 4, 2021).

§ 27-45-27. Rights of purchaser at tax sale; effect of lien; no right of action to challenge validity of tax sale; liability of county or municipal officers to purchasers.

JUDICIAL DECISIONS

1. In general.

It did not appear that any discussion was had regarding a purchaser's damages after the chancery court set aside a tax sale for lack of notice, and thus, the purchaser, had not been given an opportunity to present proof of his damages; because the tax sale had been declared void, the purchaser was entitled to a

hearing to present proof of his damages. Thoden v. Hallford, — So. 3d —, 2021 Miss. LEXIS 21 (Miss. Feb. 4, 2021).

It was proper to void a tax sale for lack of notice, and the case was remanded for the purpose of a hearing on damages because the purchaser was entitled to a refund of his tax sale purchase money paid, and he was entitled to a lien on the land for the amount of what he paid at the tax sale with interest on that amount. Thoden v. Hallford, — So. 3d —, 2021 Miss. LEXIS 21 (Miss. Feb. 4, 2021).

CHAPTER 65.

SALES TAX

IN GENERAL

§ 27-65-3. Definitions.

JUDICIAL DECISIONS

1. In general.

Chancery court did not err in determining that the company's roofing services were subject to Mississippi sales tax; the definition of tangible personal property includes property sold on an installed basis which may become part of real or personal property and thus is subject to sales tax. United Roofing & Constr. of Ms, Inc. v. Miss. Dep't of Revenue, — So. 3d —, 2020 Miss. App. LEXIS 677 (Miss. Ct. App. Dec. 8, 2020).

Definitions in Miss. Code Ann. § 27-65-3 apply to Miss. Code Ann. §§ 27-65-17, 27-65-23, and the definition of installation services includes sales of roofing and similar personal property; the plain language of the statutes require those selling and installing roofing materials, as the company did here, to remit sales tax on the gross proceeds of their sales, plus the Legislature clearly included the sale and installation of roofing materials to be a taxable event. United Roofing & Constr. of Ms, Inc. v. Miss. Dep't of Revenue, — So. 3d —, 2020 Miss. App. LEXIS 677 (Miss. Ct. App. Dec. 8, 2020).

§ 27-65-17. Selling tangible personal property wholesale and retail.

JUDICIAL DECISIONS

2. Construction and application, generally.

Chancery court did not err in determining that the company's roofing services were subject to Mississippi sales tax; the definition of tangible personal property includes property sold on an installed basis which may become part of real or personal property and thus is subject to sales tax. United Roofing & Constr. of Ms, Inc. v. Miss. Dep't of Revenue, — So. 3d —, 2020 Miss. App. LEXIS 677 (Miss. Ct. App. Dec. 8, 2020).

Definitions in Miss. Code Ann. § 27-65-3 apply to Miss. Code Ann. §§ 27-65-17, 27-65-23, and the definition of installation services includes sales of roofing and similar personal property; the plain language of the statutes require those selling and installing roofing materials, as the company did here, to remit sales tax on the gross proceeds of their sales, plus the Legislature clearly included the sale and installation of roofing materials to be a taxable event. United Roofing & Constr. of Ms, Inc. v. Miss. Dep't of Revenue, — So. 3d —, 2020 Miss. App. LEXIS 677 (Miss. Ct. App. Dec. 8, 2020).

§ 27-65-23. Miscellaneous businesses.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.

Definitions in Miss. Code Ann. § 27-65-3 apply to Miss. Code Ann. §§ 27-65-17, 27-65-23, and the definition of installation services includes sales of roofing and similar personal property; the plain language of the statutes require those selling and installing roofing materials, as the company did here, to remit sales tax on the gross proceeds of their sales, plus the Legislature clearly included the sale and installation of roofing materials to be a taxable event. United Roofing & Constr. of Ms, Inc. v. Miss. Dep't of Revenue, — So. 3d —, 2020 Miss. App. LEXIS 677 (Miss. Ct. App. Dec. 8, 2020).

§ 27-65-37. Assessment of tax by commissioner.

JUDICIAL DECISIONS

2. Construction and application.

There was no issue of inadequate tax assessment records and the audits were performed based upon the company's own records; accordingly, the statutory presumption of correctness never attached, and the burden of persuasion shifted to the company, who could not meet it. United Roofing & Constr. of Ms, Inc. v. Miss. Dep't of Revenue, — So. 3d —, 2020 Miss. App. LEXIS 677 (Miss. Ct. App. Dec. 8, 2020).

CHAPTER 103.

STATE BUDGET

BUDGET CONTINGENCY AND CAPITAL EXPENSE FUNDS

§ 27-103-301. Budget Contingency Fund created.

Editor's Notes — Laws of 2020, ch. 498, § 1, effective October 9, 2020, provides:

"SECTION 1. (1) Upon the effective date of this act, the State Fiscal Officer shall transfer to the "Poultry Farmer Stabilization Grant Program Fund" out of the Budget Contingency Fund..... $3,000,000.00.

(2) Upon the effective date of this act, the State Fiscal Officer shall transfer to the "Mississippi Supplemental CFAP Grant Program Fund" out of the Budget Contingency Fund .....$9,500,000.00.

(3) Upon the effective date of this act, the State Fiscal Officer shall transfer to the "Sweet Potato Farm Sustainment Grant Program Fund" out of the Budget Contingency Fund .....$500,000.00."

Laws of 2020, ch. 500, § 1, effective October 9, 2020, provides:

"SECTION 1. Upon the effective date of this act, the State Fiscal Officer shall transfer to the "ICU Infrastructure Fund" out of the Budget Contingency Fund..... $ 10,000,000.00."

Laws of 2020, ch. 503, § 2, effective October 9, 2020, provides:

"SECTION 2. Upon the effective date of this act, the State Fiscal Officer shall transfer to the Rental Assistance Grant Program Fund created by Section 2 of this act out of the Budget Contingency Fund (Fund Number 6117700000) .....$ 20,000,000.00."

TITLE 41.

PUBLIC HEALTH

Chapter 7.	Hospital and Health Care Commissions.	41-7-1
Chapter 14.	Mississippi ICU Infrastructure Act.	41-14-1
Chapter 29.	Poisons, Drugs and Other Controlled Substances.	41-29-1

CHAPTER 7.

HOSPITAL AND HEALTH CARE COMMISSIONS

Health Care Certificate of Need Law of 1979. 41-7-171

HEALTH CARE CERTIFICATE OF NEED LAW OF 1979

Sec.
41-7-191. Certificate of need; activities for which certificate is required.

§ 41-7-191. Certificate of need; activities for which certificate is required.

(1) No person shall engage in any of the following activities without obtaining the required certificate of need:

(a) The construction, development or other establishment of a new health care facility, which establishment shall include the reopening of a health care facility that has ceased to operate for a period of sixty (60) months or more;

(b) The relocation of a health care facility or portion thereof, or major medical equipment, unless such relocation of a health care facility or portion thereof, or major medical equipment, which does not involve a capital expenditure by or on behalf of a health care facility, is within five thousand two hundred eighty (5,280) feet from the main entrance of the health care facility;

(c) Any change in the existing bed complement of any health care facility through the addition or conversion of any beds or the alteration, modernizing or refurbishing of any unit or department in which the beds may be located; however, if a health care facility has voluntarily delicensed some of its existing bed complement, it may later relicense some or all of its delicensed beds without the necessity of having to acquire a certificate of need. The State Department of Health shall maintain a record of the delicensing health care facility and its voluntarily delicensed beds and continue counting those beds as part of the state's total bed count for health care planning purposes. If a health care facility that has voluntarily delicensed some of its beds later desires to relicense some or all of its voluntarily delicensed beds, it shall notify the State Department of Health of its intent to increase the number of its licensed beds. The State Department

of Health shall survey the health care facility within thirty (30) days of that notice and, if appropriate, issue the health care facility a new license reflecting the new contingent of beds. However, in no event may a health care facility that has voluntarily delicensed some of its beds be reissued a license to operate beds in excess of its bed count before the voluntary delicensure of some of its beds without seeking certificate of need approval;

(d) Offering of the following health services if those services have not been provided on a regular basis by the proposed provider of such services within the period of twelve (12) months prior to the time such services would be offered:

(i) Open-heart surgery services;

(ii) Cardiac catheterization services;

(iii) Comprehensive inpatient rehabilitation services;

(iv) Licensed psychiatric services;

(v) Licensed chemical dependency services;

(vi) Radiation therapy services;

(vii) Diagnostic imaging services of an invasive nature, i.e. invasive digital angiography;

(viii) Nursing home care as defined in subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h);

(ix) Home health services;

(x) Swing-bed services;

(xi) Ambulatory surgical services;

(xii) Magnetic resonance imaging services;

(xiii) [Deleted]

(xiv) Long-term care hospital services;

(xv) Positron emission tomography (PET) services;

(e) The relocation of one or more health services from one physical facility or site to another physical facility or site, unless such relocation, which does not involve a capital expenditure by or on behalf of a health care facility, (i) is to a physical facility or site within five thousand two hundred eighty (5,280) feet from the main entrance of the health care facility where the health care service is located, or (ii) is the result of an order of a court of appropriate jurisdiction or a result of pending litigation in such court, or by order of the State Department of Health, or by order of any other agency or legal entity of the state, the federal government, or any political subdivision of either, whose order is also approved by the State Department of Health;

(f) The acquisition or otherwise control of any major medical equipment for the provision of medical services; however, (i) the acquisition of any major medical equipment used only for research purposes, and (ii) the acquisition of major medical equipment to replace medical equipment for which a facility is already providing medical services and for which the State Department of Health has been notified before the date of such acquisition shall be exempt from this paragraph; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review;

(g) Changes of ownership of existing health care facilities in which a notice of intent is not filed with the State Department of Health at least thirty (30) days prior to the date such change of ownership occurs, or a change in services or bed capacity as prescribed in paragraph (c) or (d) of this subsection as a result of the change of ownership; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review;

(h) The change of ownership of any health care facility defined in subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h), in which a notice of intent as described in paragraph (g) has not been filed and if the Executive Director, Division of Medicaid, Office of the Governor, has not certified in writing that there will be no increase in allowable costs to Medicaid from revaluation of the assets or from increased interest and depreciation as a result of the proposed change of ownership;

(i) Any activity described in paragraphs (a) through (h) if undertaken by any person if that same activity would require certificate of need approval if undertaken by a health care facility;

(j) Any capital expenditure or deferred capital expenditure by or on behalf of a health care facility not covered by paragraphs (a) through (h);

(k) The contracting of a health care facility as defined in subparagraphs (i) through (viii) of Section 41-7-173(h) to establish a home office, subunit, or branch office in the space operated as a health care facility through a formal arrangement with an existing health care facility as defined in subparagraph (ix) of Section 41-7-173(h);

(*l*) The replacement or relocation of a health care facility designated as a critical access hospital shall be exempt from subsection (1) of this section so long as the critical access hospital complies with all applicable federal law and regulations regarding such replacement or relocation;

(m) Reopening a health care facility that has ceased to operate for a period of sixty (60) months or more, which reopening requires a certificate of need for the establishment of a new health care facility.

(2) The State Department of Health shall not grant approval for or issue a certificate of need to any person proposing the new construction of, addition to, or expansion of any health care facility defined in subparagraphs (iv) (skilled nursing facility) and (vi) (intermediate care facility) of Section 41-7-173(h) or the conversion of vacant hospital beds to provide skilled or intermediate nursing home care, except as hereinafter authorized:

(a) The department may issue a certificate of need to any person proposing the new construction of any health care facility defined in subparagraphs (iv) and (vi) of Section 41-7-173(h) as part of a life care retirement facility, in any county bordering on the Gulf of Mexico in which is located a National Aeronautics and Space Administration facility, not to exceed forty (40) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the health care facility that were authorized under this paragraph (a).

(b) The department may issue certificates of need in Harrison County to provide skilled nursing home care for Alzheimer's disease patients and other patients, not to exceed one hundred fifty (150) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facilities that were authorized under this paragraph (b).

(c) The department may issue a certificate of need for the addition to or expansion of any skilled nursing facility that is part of an existing continuing care retirement community located in Madison County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (c), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of beds that may be authorized under the authority of this paragraph (c) shall not exceed sixty (60) beds.

(d) The State Department of Health may issue a certificate of need to any hospital located in DeSoto County for the new construction of a skilled nursing facility, not to exceed one hundred twenty (120) beds, in DeSoto County. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (d).

(e) The State Department of Health may issue a certificate of need for the construction of a nursing facility or the conversion of beds to nursing facility beds at a personal care facility for the elderly in Lowndes County that is owned and operated by a Mississippi nonprofit corporation, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (e).

(f) The State Department of Health may issue a certificate of need for conversion of a county hospital facility in Itawamba County to a nursing

facility, not to exceed sixty (60) beds, including any necessary construction, renovation or expansion. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (f).

(g) The State Department of Health may issue a certificate of need for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in either Hinds, Madison or Rankin County, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (g).

(h) The State Department of Health may issue a certificate of need for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in either Hancock, Harrison or Jackson County, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the facility that were authorized under this paragraph (h).

(i) The department may issue a certificate of need for the new construction of a skilled nursing facility in Leake County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (i), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 41-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (i) shall not exceed sixty (60) beds. If the skilled nursing facility authorized by the certificate of need issued under this

paragraph is not constructed and fully operational within eighteen (18) months after July 1, 1994, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need, if it is still outstanding, and shall not issue a license for the skilled nursing facility at any time after the expiration of the eighteen-month period.

(j) The department may issue certificates of need to allow any existing freestanding long-term care facility in Tishomingo County and Hancock County that on July 1, 1995, is licensed with fewer than sixty (60) beds. For the purposes of this paragraph (j), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the long-term care facilities that were authorized under this paragraph (j).

(k) The department may issue a certificate of need for the construction of a nursing facility at a continuing care retirement community in Lowndes County. The total number of beds that may be authorized under the authority of this paragraph (k) shall not exceed sixty (60) beds. From and after July 1, 2001, the prohibition on the facility participating in the Medicaid program (Section 43-13-101 et seq.) that was a condition of issuance of the certificate of need under this paragraph (k) shall be revised as follows: The nursing facility may participate in the Medicaid program from and after July 1, 2001, if the owner of the facility on July 1, 2001, agrees in writing that no more than thirty (30) of the beds at the facility will be certified for participation in the Medicaid program, and that no claim will be submitted for Medicaid reimbursement for more than thirty (30) patients in the facility in any month or for any patient in the facility who is in a bed that is not Medicaid-certified. This written agreement by the owner of the facility shall be a condition of licensure of the facility, and the agreement shall be fully binding on any subsequent owner of the facility if the ownership of the facility is transferred at any time after July 1, 2001. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than thirty (30) of the beds in the facility for participation in the Medicaid program. If the facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than thirty (30) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the written agreement.

(*l*) Provided that funds are specifically appropriated therefor by the Legislature, the department may issue a certificate of need to a rehabilitation hospital in Hinds County for the construction of a sixty-bed long-term care nursing facility dedicated to the care and treatment of persons with severe disabilities including persons with spinal cord and closed-head injuries and ventilator dependent patients. The provisions of Section 41-7-

193(1) regarding substantial compliance with projection of need as reported in the current State Health Plan are waived for the purpose of this paragraph.

(m) The State Department of Health may issue a certificate of need to a county-owned hospital in the Second Judicial District of Panola County for the conversion of not more than seventy-two (72) hospital beds to nursing facility beds, provided that the recipient of the certificate of need agrees in writing that none of the beds at the nursing facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.), and that no claim will be submitted for Medicaid reimbursement in the nursing facility in any day or for any patient in the nursing facility. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the nursing facility if the ownership of the nursing facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify any of the beds in the nursing facility for participation in the Medicaid program. If the nursing facility violates the terms of the written agreement by admitting or keeping in the nursing facility on a regular or continuing basis any patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the nursing facility, at the time that the department determines, after a hearing complying with due process, that the nursing facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 2001, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 2001, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(n) The department may issue a certificate of need for the new construction, addition or conversion of skilled nursing facility beds in Madison County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be

fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (n), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (n) shall not exceed sixty (60) beds. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 1998, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 1998, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(o) The department may issue a certificate of need for the new construction, addition or conversion of skilled nursing facility beds in Leake County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (o), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the

certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (o) shall not exceed sixty (60) beds. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 2001, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 2001, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(p) The department may issue a certificate of need for the construction of a municipally owned nursing facility within the Town of Belmont in Tishomingo County, not to exceed sixty (60) beds, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (p), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 41-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. If the certificate of

need authorized under this paragraph is not issued within twelve (12) months after July 1, 1998, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 1998, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(q)(i) Beginning on July 1, 1999, the State Department of Health shall issue certificates of need during each of the next four (4) fiscal years for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in each county in the state having a need for fifty (50) or more additional nursing facility beds, as shown in the fiscal year 1999 State Health Plan, in the manner provided in this paragraph (q). The total number of nursing facility beds that may be authorized by any certificate of need authorized under this paragraph (q) shall not exceed sixty (60) beds.

(ii) Subject to the provisions of subparagraph (v), during each of the next four (4) fiscal years, the department shall issue six (6) certificates of need for new nursing facility beds, as follows: During fiscal years 2000, 2001 and 2002, one (1) certificate of need shall be issued for new nursing facility beds in the county in each of the four (4) Long-Term Care Planning Districts designated in the fiscal year 1999 State Health Plan that has the highest need in the district for those beds; and two (2) certificates of need shall be issued for new nursing facility beds in the two (2) counties from the state at large that have the highest need in the state for those beds, when considering the need on a statewide basis and without regard to the Long-Term Care Planning Districts in which the counties are located. During fiscal year 2003, one (1) certificate of need shall be issued for new nursing facility beds in any county having a need for fifty (50) or more additional nursing facility beds, as shown in the fiscal year 1999 State Health Plan, that has not received a certificate of need under this paragraph (q) during the three (3) previous fiscal years. During fiscal year 2000, in addition to the six (6) certificates of need authorized in this subparagraph, the department also shall issue a certificate of need for new nursing facility beds in Amite County and a certificate of need for new nursing facility beds in Carroll County.

(iii) Subject to the provisions of subparagraph (v), the certificate of need issued under subparagraph (ii) for nursing facility beds in each Long-Term Care Planning District during each fiscal year shall first be available for nursing facility beds in the county in the district having the

highest need for those beds, as shown in the fiscal year 1999 State Health Plan. If there are no applications for a certificate of need for nursing facility beds in the county having the highest need for those beds by the date specified by the department, then the certificate of need shall be available for nursing facility beds in other counties in the district in descending order of the need for those beds, from the county with the second highest need to the county with the lowest need, until an application is received for nursing facility beds in an eligible county in the district.

(iv) Subject to the provisions of subparagraph (v), the certificate of need issued under subparagraph (ii) for nursing facility beds in the two (2) counties from the state at large during each fiscal year shall first be available for nursing facility beds in the two (2) counties that have the highest need in the state for those beds, as shown in the fiscal year 1999 State Health Plan, when considering the need on a statewide basis and without regard to the Long-Term Care Planning Districts in which the counties are located. If there are no applications for a certificate of need for nursing facility beds in either of the two (2) counties having the highest need for those beds on a statewide basis by the date specified by the department, then the certificate of need shall be available for nursing facility beds in other counties from the state at large in descending order of the need for those beds on a statewide basis, from the county with the second highest need to the county with the lowest need, until an application is received for nursing facility beds in an eligible county from the state at large.

(v) If a certificate of need is authorized to be issued under this paragraph (q) for nursing facility beds in a county on the basis of the need in the Long-Term Care Planning District during any fiscal year of the four-year period, a certificate of need shall not also be available under this paragraph (q) for additional nursing facility beds in that county on the basis of the need in the state at large, and that county shall be excluded in determining which counties have the highest need for nursing facility beds in the state at large for that fiscal year. After a certificate of need has been issued under this paragraph (q) for nursing facility beds in a county during any fiscal year of the four-year period, a certificate of need shall not be available again under this paragraph (q) for additional nursing facility beds in that county during the four-year period, and that county shall be excluded in determining which counties have the highest need for nursing facility beds in succeeding fiscal years.

(vi) If more than one (1) application is made for a certificate of need for nursing home facility beds available under this paragraph (q), in Yalobusha, Newton or Tallahatchie County, and one (1) of the applicants is a county-owned hospital located in the county where the nursing facility beds are available, the department shall give priority to the county-owned hospital in granting the certificate of need if the following conditions are met:

1. The county-owned hospital fully meets all applicable criteria and

standards required to obtain a certificate of need for the nursing facility beds; and

2. The county-owned hospital's qualifications for the certificate of need, as shown in its application and as determined by the department, are at least equal to the qualifications of the other applicants for the certificate of need.

(r)(i) Beginning on July 1, 1999, the State Department of Health shall issue certificates of need during each of the next two (2) fiscal years for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in each of the four (4) Long-Term Care Planning Districts designated in the fiscal year 1999 State Health Plan, to provide care exclusively to patients with Alzheimer's disease.

(ii) Not more than twenty (20) beds may be authorized by any certificate of need issued under this paragraph (r), and not more than a total of sixty (60) beds may be authorized in any Long-Term Care Planning District by all certificates of need issued under this paragraph (r). However, the total number of beds that may be authorized by all certificates of need issued under this paragraph (r) during any fiscal year shall not exceed one hundred twenty (120) beds, and the total number of beds that may be authorized in any Long-Term Care Planning District during any fiscal year shall not exceed forty (40) beds. Of the certificates of need that are issued for each Long-Term Care Planning District during the next two (2) fiscal years, at least one (1) shall be issued for beds in the northern part of the district, at least one (1) shall be issued for beds in the central part of the district, and at least one (1) shall be issued for beds in the southern part of the district.

(iii) The State Department of Health, in consultation with the Department of Mental Health and the Division of Medicaid, shall develop and prescribe the staffing levels, space requirements and other standards and requirements that must be met with regard to the nursing facility beds authorized under this paragraph (r) to provide care exclusively to patients with Alzheimer's disease.

(s) The State Department of Health may issue a certificate of need to a nonprofit skilled nursing facility using the Green House model of skilled nursing care and located in Yazoo City, Yazoo County, Mississippi, for the construction, expansion or conversion of not more than nineteen (19) nursing facility beds. For purposes of this paragraph (s), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized under this paragraph (s).

(t) The State Department of Health shall issue certificates of need to the owner of a nursing facility in operation at the time of Hurricane Katrina in Hancock County that was not operational on December 31, 2005, because

of damage sustained from Hurricane Katrina to authorize the following: (i) the construction of a new nursing facility in Harrison County; (ii) the relocation of forty-nine (49) nursing facility beds from the Hancock County facility to the new Harrison County facility; (iii) the establishment of not more than twenty (20) non-Medicaid nursing facility beds at the Hancock County facility; and (iv) the establishment of not more than twenty (20) non-Medicaid beds at the new Harrison County facility. The certificates of need that authorize the non-Medicaid nursing facility beds under subparagraphs (iii) and (iv) of this paragraph (t) shall be subject to the following conditions: The owner of the Hancock County facility and the new Harrison County facility must agree in writing that no more than fifty (50) of the beds at the Hancock County facility and no more than forty-nine (49) of the beds at the Harrison County facility will be certified for participation in the Medicaid program, and that no claim will be submitted for Medicaid reimbursement for more than fifty (50) patients in the Hancock County facility in any month, or for more than forty-nine (49) patients in the Harrison County facility in any month, or for any patient in either facility who is in a bed that is not Medicaid-certified. This written agreement by the owner of the nursing facilities shall be a condition of the issuance of the certificates of need under this paragraph (t), and the agreement shall be fully binding on any later owner or owners of either facility if the ownership of either facility is transferred at any time after the certificates of need are issued. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than fifty (50) of the beds at the Hancock County facility or more than forty-nine (49) of the beds at the Harrison County facility for participation in the Medicaid program. If the Hancock County facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than fifty (50) patients who are participating in the Medicaid program, or if the Harrison County facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than forty-nine (49) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility that is in violation of the agreement, at the time that the department determines, after a hearing complying with due process, that the facility has violated the agreement.

(u) The State Department of Health shall issue a certificate of need to a nonprofit venture for the establishment, construction and operation of a skilled nursing facility of not more than sixty (60) beds to provide skilled nursing care for ventilator dependent or otherwise medically dependent pediatric patients who require medical and nursing care or rehabilitation services to be located in a county in which an academic medical center and a children's hospital are located, and for any construction and for the acquisition of equipment related to those beds. The facility shall be authorized to keep such ventilator dependent or otherwise medically dependent pediatric patients beyond age twenty-one (21) in accordance with regula-

tions of the State Board of Health. For purposes of this paragraph (u), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived, and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. The beds authorized by this paragraph shall be counted as pediatric skilled nursing facility beds for health planning purposes under Section 41-7-171 et seq. There shall be no prohibition of or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized by this paragraph.

(3) The State Department of Health may grant approval for and issue certificates of need to any person proposing the new construction of, addition to, conversion of beds of or expansion of any health care facility defined in subparagraph (x) (psychiatric residential treatment facility) of Section 41-7-173(h). The total number of beds which may be authorized by such certificates of need shall not exceed three hundred thirty-four (334) beds for the entire state.

(a) Of the total number of beds authorized under this subsection, the department shall issue a certificate of need to a privately owned psychiatric residential treatment facility in Simpson County for the conversion of sixteen (16) intermediate care facility for the mentally retarded (ICF-MR) beds to psychiatric residential treatment facility beds, provided that facility agrees in writing that the facility shall give priority for the use of those sixteen (16) beds to Mississippi residents who are presently being treated in out-of-state facilities.

(b) Of the total number of beds authorized under this subsection, the department may issue a certificate or certificates of need for the construction or expansion of psychiatric residential treatment facility beds or the conversion of other beds to psychiatric residential treatment facility beds in Warren County, not to exceed sixty (60) psychiatric residential treatment facility beds, provided that the facility agrees in writing that no more than thirty (30) of the beds at the psychiatric residential treatment facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.) for the use of any patients other than those who are participating only in the Medicaid program of another state, and that no claim will be submitted to the Division of Medicaid for Medicaid reimbursement for more than thirty (30) patients in the psychiatric residential treatment facility in any day or for any patient in the psychiatric residential treatment facility who is in a bed that is not Medicaid-certified. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the psychiatric residential treatment facility if the ownership of the facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than thirty (30) of the beds in the psychiatric residential treatment facility for participation in the Medicaid program for the use of

any patients other than those who are participating only in the Medicaid program of another state. If the psychiatric residential treatment facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than thirty (30) patients who are participating in the Mississippi Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement.

The State Department of Health, on or before July 1, 2002, shall transfer the certificate of need authorized under the authority of this paragraph (b), or reissue the certificate of need if it has expired, to River Region Health System.

(c) Of the total number of beds authorized under this subsection, the department shall issue a certificate of need to a hospital currently operating Medicaid-certified acute psychiatric beds for adolescents in DeSoto County, for the establishment of a forty-bed psychiatric residential treatment facility in DeSoto County, provided that the hospital agrees in writing (i) that the hospital shall give priority for the use of those forty (40) beds to Mississippi residents who are presently being treated in out-of-state facilities, and (ii) that no more than fifteen (15) of the beds at the psychiatric residential treatment facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.), and that no claim will be submitted for Medicaid reimbursement for more than fifteen (15) patients in the psychiatric residential treatment facility in any day or for any patient in the psychiatric residential treatment facility who is in a bed that is not Medicaid-certified. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the psychiatric residential treatment facility if the ownership of the facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than fifteen (15) of the beds in the psychiatric residential treatment facility for participation in the Medicaid program. If the psychiatric residential treatment facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than fifteen (15) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement.

(d) Of the total number of beds authorized under this subsection, the department may issue a certificate or certificates of need for the construction or expansion of psychiatric residential treatment facility beds or the conversion of other beds to psychiatric treatment facility beds, not to exceed thirty

(30) psychiatric residential treatment facility beds, in either Alcorn, Tishomingo, Prentiss, Lee, Itawamba, Monroe, Chickasaw, Pontotoc, Calhoun, Lafayette, Union, Benton or Tippah County.

(e) Of the total number of beds authorized under this subsection (3) the department shall issue a certificate of need to a privately owned, nonprofit psychiatric residential treatment facility in Hinds County for an eight-bed expansion of the facility, provided that the facility agrees in writing that the facility shall give priority for the use of those eight (8) beds to Mississippi residents who are presently being treated in out-of-state facilities.

(f) The department shall issue a certificate of need to a one-hundred-thirty-four-bed specialty hospital located on twenty-nine and forty-four one-hundredths (29.44) commercial acres at 5900 Highway 39 North in Meridian (Lauderdale County), Mississippi, for the addition, construction or expansion of child/adolescent psychiatric residential treatment facility beds in Lauderdale County. As a condition of issuance of the certificate of need under this paragraph, the facility shall give priority in admissions to the child/adolescent psychiatric residential treatment facility beds authorized under this paragraph to patients who otherwise would require out-of-state placement. The Division of Medicaid, in conjunction with the Department of Human Services, shall furnish the facility a list of all out-of-state patients on a quarterly basis. Furthermore, notice shall also be provided to the parent, custodial parent or guardian of each out-of-state patient notifying them of the priority status granted by this paragraph. For purposes of this paragraph, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of child/adolescent psychiatric residential treatment facility beds that may be authorized under the authority of this paragraph shall be sixty (60) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this paragraph or for the beds converted pursuant to the authority of that certificate of need.

(4)(a) From and after July 1, 1993, the department shall not issue a certificate of need to any person for the new construction of any hospital, psychiatric hospital or chemical dependency hospital that will contain any child/adolescent psychiatric or child/adolescent chemical dependency beds, or for the conversion of any other health care facility to a hospital, psychiatric hospital or chemical dependency hospital that will contain any child/adolescent psychiatric or child/adolescent chemical dependency beds, or for the addition of any child/adolescent psychiatric or child/adolescent chemical dependency beds in any hospital, psychiatric hospital or chemical dependency hospital, or for the conversion of any beds of another category in any hospital, psychiatric hospital or chemical dependency hospital to child/adolescent psychiatric or child/adolescent chemical dependency beds, except as hereinafter authorized:

(i) The department may issue certificates of need to any person for any purpose described in this subsection, provided that the hospital,

psychiatric hospital or chemical dependency hospital does not participate in the Medicaid program (Section 43-13-101 et seq.) at the time of the application for the certificate of need and the owner of the hospital, psychiatric hospital or chemical dependency hospital agrees in writing that the hospital, psychiatric hospital or chemical dependency hospital will not at any time participate in the Medicaid program or admit or keep any patients who are participating in the Medicaid program in the hospital, psychiatric hospital or chemical dependency hospital. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the hospital, psychiatric hospital or chemical dependency hospital, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the hospital, psychiatric hospital or chemical dependency hospital will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subparagraph (i), and if such hospital, psychiatric hospital or chemical dependency hospital at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the hospital, psychiatric hospital or chemical dependency hospital who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the hospital, psychiatric hospital or chemical dependency hospital, at the time that the department determines, after a hearing complying with due process, that the hospital, psychiatric hospital or chemical dependency hospital has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subparagraph (i) and in the written agreement by the recipient of the certificate of need.

(ii) The department may issue a certificate of need for the conversion of existing beds in a county hospital in Choctaw County from acute care beds to child/adolescent chemical dependency beds. For purposes of this subparagraph (ii), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the hospital receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(iii) The department may issue a certificate or certificates of need for the construction or expansion of child/adolescent psychiatric beds or the conversion of other beds to child/adolescent psychiatric beds in Warren County. For purposes of this subparagraph (iii), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph

shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

If by January 1, 2002, there has been no significant commencement of construction of the beds authorized under this subparagraph (iii), or no significant action taken to convert existing beds to the beds authorized under this subparagraph, then the certificate of need that was previously issued under this subparagraph shall expire. If the previously issued certificate of need expires, the department may accept applications for issuance of another certificate of need for the beds authorized under this subparagraph, and may issue a certificate of need to authorize the construction, expansion or conversion of the beds authorized under this subparagraph.

(iv) The department shall issue a certificate of need to the Region 7 Mental Health/Retardation Commission for the construction or expansion of child/adolescent psychiatric beds or the conversion of other beds to child/adolescent psychiatric beds in any of the counties served by the commission. For purposes of this subparagraph (iv), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(v) The department may issue a certificate of need to any county hospital located in Leflore County for the construction or expansion of adult psychiatric beds or the conversion of other beds to adult psychiatric beds, not to exceed twenty (20) beds, provided that the recipient of the certificate of need agrees in writing that the adult psychiatric beds will not at any time be certified for participation in the Medicaid program and that the hospital will not admit or keep any patients who are participating in the Medicaid program in any of such adult psychiatric beds. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the hospital if the ownership of the hospital is transferred at any time after the issuance of the certificate of need. Agreement that the adult psychiatric beds will not be certified for participation in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subparagraph (v), and if such hospital at any time after the issuance of the certificate of need, regardless of the ownership of the hospital, has any of such adult psychiatric beds certified for participation in the Medicaid program or admits or keeps any Medicaid patients in such adult psychiatric beds, the

State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the hospital at the time that the department determines, after a hearing complying with due process, that the hospital has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subparagraph and in the written agreement by the recipient of the certificate of need.

(vi) The department may issue a certificate or certificates of need for the expansion of child psychiatric beds or the conversion of other beds to child psychiatric beds at the University of Mississippi Medical Center. For purposes of this subparagraph (vi), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed fifteen (15) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the hospital receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(b) From and after July 1, 1990, no hospital, psychiatric hospital or chemical dependency hospital shall be authorized to add any child/adolescent psychiatric or child/adolescent chemical dependency beds or convert any beds of another category to child/adolescent psychiatric or child/adolescent chemical dependency beds without a certificate of need under the authority of subsection (1)(c) of this section.

(5) The department may issue a certificate of need to a county hospital in Winston County for the conversion of fifteen (15) acute care beds to geriatric psychiatric care beds.

(6) The State Department of Health shall issue a certificate of need to a Mississippi corporation qualified to manage a long-term care hospital as defined in Section 41-7-173(h)(xii) in Harrison County, not to exceed eighty (80) beds, including any necessary renovation or construction required for licensure and certification, provided that the recipient of the certificate of need agrees in writing that the long-term care hospital will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the long-term care hospital who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the long-term care hospital, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the long-term care hospital will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subsection (6), and if such long-term care hospital at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the

certificate of need, if it is still outstanding, and shall deny or revoke the license of the long-term care hospital, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subsection and in the written agreement by the recipient of the certificate of need. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived.

(7) The State Department of Health may issue a certificate of need to any hospital in the state to utilize a portion of its beds for the "swing-bed" concept. Any such hospital must be in conformance with the federal regulations regarding such swing-bed concept at the time it submits its application for a certificate of need to the State Department of Health, except that such hospital may have more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program. Any hospital meeting all federal requirements for participation in the swing-bed program which receives such certificate of need shall render services provided under the swing-bed concept to any patient eligible for Medicare (Title XVIII of the Social Security Act) who is certified by a physician to be in need of such services, and no such hospital shall permit any patient who is eligible for both Medicaid and Medicare or eligible only for Medicaid to stay in the swing beds of the hospital for more than thirty (30) days per admission unless the hospital receives prior approval for such patient from the Division of Medicaid, Office of the Governor. Any hospital having more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program which receives such certificate of need shall develop a procedure to insure that before a patient is allowed to stay in the swing beds of the hospital, there are no vacant nursing home beds available for that patient located within a fifty-mile radius of the hospital. When any such hospital has a patient staying in the swing beds of the hospital and the hospital receives notice from a nursing home located within such radius that there is a vacant bed available for that patient, the hospital shall transfer the patient to the nursing home within a reasonable time after receipt of the notice. Any hospital which is subject to the requirements of the two (2) preceding sentences of this subsection may be suspended from participation in the swing-bed program for a reasonable period of time by the State Department of Health if the department, after a hearing complying with due process, determines that the hospital has failed to comply with any of those requirements.

(8) The Department of Health shall not grant approval for or issue a certificate of need to any person proposing the new construction of, addition to or expansion of a health care facility as defined in subparagraph (viii) of Section 41-7-173(h), except as hereinafter provided: The department may issue a certificate of need to a nonprofit corporation located in Madison County, Mississippi, for the construction, expansion or conversion of not more than twenty (20) beds in a community living program for developmentally disabled

adults in a facility as defined in subparagraph (viii) of Section 41-7-173(h). For purposes of this subsection (8), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized under this subsection (8).

(9) The Department of Health shall not grant approval for or issue a certificate of need to any person proposing the establishment of, or expansion of the currently approved territory of, or the contracting to establish a home office, subunit or branch office within the space operated as a health care facility as defined in Section 41-7-173(h)(i) through (viii) by a health care facility as defined in subparagraph (ix) of Section 41-7-173(h).

(10) Health care facilities owned and/or operated by the state or its agencies are exempt from the restraints in this section against issuance of a certificate of need if such addition or expansion consists of repairing or renovation necessary to comply with the state licensure law. This exception shall not apply to the new construction of any building by such state facility. This exception shall not apply to any health care facilities owned and/or operated by counties, municipalities, districts, unincorporated areas, other defined persons, or any combination thereof.

(11) The new construction, renovation or expansion of or addition to any health care facility defined in subparagraph (ii) (psychiatric hospital), subparagraph (iv) (skilled nursing facility), subparagraph (vi) (intermediate care facility), subparagraph (viii) (intermediate care facility for the mentally retarded) and subparagraph (x) (psychiatric residential treatment facility) of Section 41-7-173(h) which is owned by the State of Mississippi and under the direction and control of the State Department of Mental Health, and the addition of new beds or the conversion of beds from one category to another in any such defined health care facility which is owned by the State of Mississippi and under the direction and control of the State Department of Mental Health, shall not require the issuance of a certificate of need under Section 41-7-171 et seq., notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(12) The new construction, renovation or expansion of or addition to any veterans homes or domiciliaries for eligible veterans of the State of Mississippi as authorized under Section 35-1-19 shall not require the issuance of a certificate of need, notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(13) The repair or the rebuilding of an existing, operating health care facility that sustained significant damage from a natural disaster that occurred after April 15, 2014, in an area that is proclaimed a disaster area or subject to a state of emergency by the Governor or by the President of the United States shall be exempt from all of the requirements of the Mississippi Certificate of Need Law (Section 41-7-171 et seq.) and any and all rules and regulations promulgated under that law, subject to the following conditions:

(a) The repair or the rebuilding of any such damaged health care facility must be within one (1) mile of the pre-disaster location of the campus

of the damaged health care facility, except that any temporary post-disaster health care facility operating location may be within five (5) miles of the pre-disaster location of the damaged health care facility;

(b) The repair or the rebuilding of the damaged health care facility (i) does not increase or change the complement of its bed capacity that it had before the Governor's or the President's proclamation, (ii) does not increase or change its levels and types of health care services that it provided before the Governor's or the President's proclamation, and (iii) does not rebuild in a different county; however, this paragraph does not restrict or prevent a health care facility from decreasing its bed capacity that it had before the Governor's or the President's proclamation, or from decreasing the levels of or decreasing or eliminating the types of health care services that it provided before the Governor's or the President's proclamation, when the damaged health care facility is repaired or rebuilt;

(c) The exemption from Certificate of Need Law provided under this subsection (13) is valid for only five (5) years from the date of the Governor's or the President's proclamation. If actual construction has not begun within that five-year period, the exemption provided under this subsection is inapplicable; and

(d) The Division of Health Facilities Licensure and Certification of the State Department of Health shall provide the same oversight for the repair or the rebuilding of the damaged health care facility that it provides to all health care facility construction projects in the state.

For the purposes of this subsection (13), "significant damage" to a health care facility means damage to the health care facility requiring an expenditure of at least One Million Dollars ($1,000,000.00).

(14) The State Department of Health shall issue a certificate of need to any hospital which is currently licensed for two hundred fifty (250) or more acute care beds and is located in any general hospital service area not having a comprehensive cancer center, for the establishment and equipping of such a center which provides facilities and services for outpatient radiation oncology therapy, outpatient medical oncology therapy, and appropriate support services including the provision of radiation therapy services. The provisions of Section 41-7-193(1) regarding substantial compliance with the projection of need as reported in the current State Health Plan are waived for the purpose of this subsection.

(15) The State Department of Health may authorize the transfer of hospital beds, not to exceed sixty (60) beds, from the North Panola Community Hospital to the South Panola Community Hospital. The authorization for the transfer of those beds shall be exempt from the certificate of need review process.

(16) The State Department of Health shall issue any certificates of need necessary for Mississippi State University and a public or private health care provider to jointly acquire and operate a linear accelerator and a magnetic resonance imaging unit. Those certificates of need shall cover all capital expenditures related to the project between Mississippi State University and

the health care provider, including, but not limited to, the acquisition of the linear accelerator, the magnetic resonance imaging unit and other radiological modalities; the offering of linear accelerator and magnetic resonance imaging services; and the cost of construction of facilities in which to locate these services. The linear accelerator and the magnetic resonance imaging unit shall be (a) located in the City of Starkville, Oktibbeha County, Mississippi; (b) operated jointly by Mississippi State University and the public or private health care provider selected by Mississippi State University through a request for proposals (RFP) process in which Mississippi State University selects, and the Board of Trustees of State Institutions of Higher Learning approves, the health care provider that makes the best overall proposal; (c) available to Mississippi State University for research purposes two-thirds (2/3) of the time that the linear accelerator and magnetic resonance imaging unit are operational; and (d) available to the public or private health care provider selected by Mississippi State University and approved by the Board of Trustees of State Institutions of Higher Learning one-third (1/3) of the time for clinical, diagnostic and treatment purposes. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived.

(17) The State Department of Health shall issue a certificate of need for the construction of an acute care hospital in Kemper County, not to exceed twenty-five (25) beds, which shall be named the "John C. Stennis Memorial Hospital." In issuing the certificate of need under this subsection, the department shall give priority to a hospital located in Lauderdale County that has two hundred fifteen (215) beds. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person or entity receiving the certificate of need authorized under this subsection or for the beds constructed under the authority of that certificate of need.

(18) The planning, design, construction, renovation, addition, furnishing and equipping of a clinical research unit at any health care facility defined in Section 41-7-173(h) that is under the direction and control of the University of Mississippi Medical Center and located in Jackson, Mississippi, and the addition of new beds or the conversion of beds from one (1) category to another in any such clinical research unit, shall not require the issuance of a certificate of need under Section 41-7-171 et seq., notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(19) [Repealed]

(20) Nothing in this section or in any other provision of Section 41-7-171 et seq. shall prevent any nursing facility from designating an appropriate number of existing beds in the facility as beds for providing care exclusively to patients with Alzheimer's disease.

(21) Nothing in this section or any other provision of Section 41-7-171 et seq. shall prevent any health care facility from the new construction, renova-

tion, conversion or expansion of new beds in the facility designated as intensive care units, negative pressure rooms, or isolation rooms pursuant to the provisions of Sections 41-14-1 through 41-14-11. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived.

HISTORY: Laws, 1979, ch. 451, §§ 9, 27; Laws, 1980, ch. 493, § 5; Laws, 1981, ch. 484, § 14; Laws, 1982, ch. 499, § 1; Laws, 1983, ch. 484, § 5; Laws, 1984, ch. 505; Laws, 1985, ch. 534, § 8; Laws, 1986, ch. 437, § 40; Laws, 1987, ch. 515, § 6; Laws, 1988, ch. 421, § 1; Laws, 1989, ch. 530, § 2; Laws, 1990, ch. 510, § 2; Laws, 1993, ch. 426, § 10; Laws, 1993, ch. 493, § 1; Laws, 1993, ch. 609, § 10; Laws, 1994, ch. 649, § 16; Laws, 1995, ch. 599, § 1; Laws, 1996, ch. 551, § 1; Laws, 1998, ch. 596, § 1; Laws, 1999, ch. 303, § 1; Laws, 1999, ch. 495, § 2; Laws, 1999, ch. 583, § 2; Laws, 2001, ch. 342, § 1; Laws, 2001, ch. 607, § 1; Laws, 2002, ch. 636B, § 6; Laws, 2003, ch. 393, § 2; Laws, 2004, ch. 438, § 1; Laws, 2006, ch. 513, § 1; Laws, 2007, ch. 514, § 21; Laws, 2012, ch. 524, § 14; Laws, 2015, ch. 491, § 1, eff from and after passage; Laws, 2020, ch. 500, § 9 (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

Amendment Notes — The 2020 amendment, effective October 9, 2020, added (21).

CHAPTER 14.

MISSISSIPPI ICU INFRASTRUCTURE ACT

Sec.

41-14-1. Short title.
41-14-3. Establishment and administration of the ICU Infrastructure Program to help hospitals increase treatment capacity related to the COVID-19 pandemic.
41-14-5. Department of Health duties and responsibilities related to governing the administration of the program; allocation of program funds.
41-14-7. ICU Infrastructure Fund created; use of monies; unexpended monies.
41-14-9. Repayment of funds expended for purpose not complying with federal guidelines.
41-14-11. Status report of appropriated funds.

§ 41-14-1. Short title.

This chapter shall be known and may be cited as the "Mississippi ICU Infrastructure Act."

HISTORY: Laws, 2020, ch. 500 § 2, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any

reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-3. Establishment and administration of the ICU Infrastructure Program to help hospitals increase treatment capacity related to the COVID-19 pandemic.

In response to the COVID-19 pandemic, the Mississippi Department of Health shall establish and administer the ICU Infrastructure Program for the purpose of providing funds to hospitals to increase treatment capacity related to the COVID-19 pandemic, including adding intensive care units, isolation rooms or negative pressure rooms, and related construction and facilitation costs, but not to include any administrative expenses or costs or any staffing expenses or costs. For the purpose of this section, "related construction and facilitation costs" is defined as allowing funding for intensive care units, negative pressure rooms, or isolation rooms, related medical equipment and any needed HVAC system alterations to accommodate the negative pressure, isolation rooms and intensive care units.

HISTORY: Laws, 2020, ch. 500 § 3, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides: "SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-5. Department of Health duties and responsibilities related to governing the administration of the program; allocation of program funds.

(1) The Department of Health shall:

(a) Promulgate rules and regulations to govern the administration of the program;

(b) Make every effort to expend the funds appropriated to the program established in this chapter by October 30, 2020;

(c) Require recipients of funds under this program to certify that there is a need to add intensive care units, isolation rooms or negative pressure rooms at the facility receiving funds;

(d) Require recipients of funds under this program to certify that the facility adding intensive care units, isolation rooms or negative pressure rooms can adequately staff such units or rooms; and

(e) Certify to the Department of Finance and Administration that each expenditure of the funds appropriated to the Department of Health under this chapter is in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the

United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act.

(2) No individual hospital shall receive more than twenty-five percent (25%) of the funds appropriated to this program.

(3) The Department of Health may retain up to Fifty Thousand Dollars ($50,000.00) of the funds appropriated to the program established in this chapter to pay reasonable expenses incurred in the administration of the program.

(4) Out of the funds appropriated to this program, the Department of Health shall expend twenty percent (20%) or more of such funds for hospitals in Mississippi that are either designated as a Level III Trauma Center or a Level IV Trauma Center.

HISTORY: Laws, 2020, ch. 500, § 4, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-7. ICU Infrastructure Fund created; use of monies; unexpended monies.

(1) There is created a special fund in the State Treasury, to be known as the "ICU Infrastructure Fund," from which the awards authorized under the ICU Infrastructure Program shall be disbursed by the Department of Health.

(2)(a) All monies shall be disbursed from the fund created in subsection (1) of this section in compliance with the guidelines, guidance, rules, regulations or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act. However, unexpended amounts of any monies unrelated to the Coronavirus Relief Fund, whether appropriated by the Legislature or donated by any public or private entity, remaining in the funds at the end of a fiscal year shall not lapse into the Budget Contingency Fund or the State General Fund, and any investment earnings or interest earned on amounts in the program fund shall be deposited to the credit of the ICU Infrastructure Fund; and

(b) If on December 15, 2020, there are unexpended Coronavirus Relief Fund monies remaining in the fund created in this section, those funds shall be transferred into the Unemployment Compensation Fund no later than December 30, 2020.

(3) The use of funds allocated under this program shall be subject to audit by the United States Department of the Treasury's Office of Inspector General and the Mississippi Office of the State Auditor. Each person receiving funds under these programs found to be fully or partially noncompliant with the

requirements in this chapter shall return to the state all or a portion of the funds received.

HISTORY: Laws, 2020, ch. 500, § 5, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 1, effective October 9, 2020, provides:

"SECTION 1. Upon the effective date of this act, the State Fiscal Officer shall transfer to the "ICU Infrastructure Fund" out of the Budget Contingency Fund..... $ 10,000,000.00."

Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-9. Repayment of funds expended for purpose not complying with federal guidelines.

If the Office of Inspector General of the United States Department of the Treasury, or the Office of Inspector General of any other federal agency having oversight over the use of monies from the Coronavirus Relief Fund established by the CARES Act (a) determines that the Department of Health or recipient has expended or otherwise used any of the funds appropriated to the Department of Health under this chapter for any purpose that is not in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act, and (b) the State of Mississippi is required to repay the federal government for any of those funds that the Office of the Inspector General determined were expended or otherwise used improperly by the Department of Health or recipient, then the Department of Health or recipient that expended or otherwise used those funds improperly shall be required to pay the amount of those funds to the State of Mississippi for repayment to the federal government.

HISTORY: Laws, 2020, ch. 500, § 6, eff from and after passage(became law without the Governor's signature on) (October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-11. Status report of appropriated funds.

On October 15, 2020, the Department of Health shall provide the Lieutenant Governor, the Speaker of the House of Representatives, the Chair of the

Senate Public Health and Welfare Committee, and the Chair of the House Public Health and Human Services Committee with a status report of the funds appropriated to it under this chapter. Thereafter, the Department of Health shall report weekly on the status of the funds under this chapter until October 30, 2020 or until the funds under this chapter are fully expended, whichever is later.

HISTORY: Laws, 2020, ch. 500, § 7, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides: "SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

CHAPTER 29.

POISONS, DRUGS AND OTHER CONTROLLED SUBSTANCES

Article 3. Uniform Controlled Substances Law. 41-29-101

ARTICLE 3.

UNIFORM CONTROLLED SUBSTANCES LAW.

Sec.
41-29-111. Powers and duties of bureau; regulation of substances.
41-29-121. Schedule V of controlled substances.

§ 41-29-111. Powers and duties of bureau; regulation of substances.

(1) The Commissioner of Public Safety shall administer this article and shall work in conjunction and cooperation with the State Board of Pharmacy, county and municipal law enforcement agencies, the district and county attorneys, the Office of the Attorney General and the Mississippi Bureau of Narcotics. The State Board of Health shall work with the bureau in an advisory capacity and shall be responsible for recommending to the Legislature the appropriate schedule for all substances to be scheduled or rescheduled in Sections 41-29-113 through 41-29-121. In making a recommendation regarding a substance, the State Board of Health shall consider the following:

(a)(i) The actual or relative potential for abuse;

(ii) The scientific evidence of its pharmacological effect, if known;

(iii) The state of current scientific knowledge regarding the substance;

(iv) The history and current pattern of abuse;

(v) The scope, duration and significance of abuse;

(vi) The risk to the public health;

(vii) The potential of the substance to produce psychic or physiological dependence liability; and

(viii) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in paragraph (a), the State Board of Health shall make findings with respect thereto and issue a recommendation to control the substance if it finds the substance has a potential for abuse.

(c) If the State Board of Health designates a substance as an immediate precursor, substances that are precursors of the controlled precursor shall not be recommended for control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the State Board of Health, it shall recommend the control of the substance under this article at the next session of the Legislature.

(e)(i) Authority to control under this article does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in the Local Option Alcoholic Beverage Control Law, being Sections 67-1-1 through 67-1-91, and the Tobacco Tax Law of 1934, being Sections 27-69-1 through 27-69-77. It is the intent of the Legislature of the State of Mississippi that the bureau shall concentrate its efforts and resources on the enforcement of the Uniform Controlled Substances Law with respect to illicit narcotic and drug traffic in the state.

(ii) The controlled substances listed in the schedules in Sections 41-29-113 through 41-29-121 are included by whatever official, common, usual, chemical or trade name designated.

(f) The State Board of Health shall recommend the exclusion of any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug and Cosmetic Act and the laws of this state, be lawfully sold over the counter without a prescription.

(2) Any drug that is scheduled on the federal schedule for the purpose of preventing or treating COVID-19 is automatically scheduled on the corresponding state schedule in Sections 41-29-113 through 41-29-121. This automatic scheduling is effective from the date that the COVID-19-related drug is designated on the federal schedule until the effective date of legislation amending the corresponding state schedule in the next regular session of the Legislature.

HISTORY: Codes, 1942, § 6831-55; Laws, 1971, ch. 521, § 5; Laws, 1972, ch. 520, § 4; Laws, 1983, ch. 522, § 13; Laws, 2004, ch. 595, § 19; Laws, 2009, ch. 469, § 3, eff from and after July 1, 2009; Laws, 2020, ch. 497, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment added (2).

§ 41-29-121. Schedule V of controlled substances.

SCHEDULE V

(a) Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. [Reserved]

(c) **Narcotic drugs containing nonnarcotic active medicinal ingredients.** Any compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(2) Not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(3) Not more than one hundred (100) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(4) Not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulphate per dosage unit;

(5) Not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams;

(6) Not more than five-tenths (0.5) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.

(d) **Stimulants.** Unless specifically excepted or listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers and salts of isomers: Pyrovalerone.

(e) **Depressants.** Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers and salts of isomers:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB-34714; Briviact);

(2) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester];

(3) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide];

(4) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

(f) Any material, compound, mixture or preparation which contains any quantity of a Schedule V controlled substance and is listed as an exempt

substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

HISTORY: Codes, 1942, § 6831-61; Laws, 1971, ch. 521, § 11; Laws, 1978, ch. 404, § 5; Laws, 1979, ch. 368, § 4; Laws, 1983, ch. 404, § 5; Laws, 1986, ch. 512, § 3; Laws, 1989, ch. 568, § 5; 1995, ch. 443, § 5; Laws, 2006, ch. 416, § 3; Laws, 2008, ch. 491, § 5; Laws, 2011, ch. 449, § 4; Laws, 2013, ch. 378, § 2; Laws, 2017, ch. 394, § 5, eff from and after July 1, 2017; Laws, 2020, ch. 497, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment deleted former (f), which read: "**Approved cannabidiol drugs.** A drug product in finished dosage formulation that has been approved by the United States Food and Drug Administration that contains cannabidiol (2-R-3-methyl-6R-1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols"; and redesignated former (g) as (f).

§ 41-29-139. Prohibited acts; penalties.

JUDICIAL DECISIONS

III. PROSECUTION; PROCEDURE.

16. Jury instructions.

Defendant was entitled to reversal of his conviction for selling methamphetamine because the jury was not instructed on an essential element of the charged crime where the instruction omitted the essential element that defendant knowingly and intentionally sold a controlled substance. Jennings v. State, — So. 3d —, 2021 Miss. App. LEXIS 61 (Miss. Ct. App. Feb. 9, 2021).

TITLE 43.

PUBLIC WELFARE

CHAPTER 13.

MEDICAL ASSISTANCE FOR THE AGED; MEDICAID

ARTICLE 3.

MEDICAID.

§ 43-13-121. Authority to administer article.

JUDICIAL DECISIONS

1. In general.

Chancery court erred in upholding a decision by the Mississippi Division of Medicaid (DOM) in calculating the statutorily imposed annual hospital assessment for the fiscal year 2017 because DOM was responsible for seeking approval from the Governor and adhering to the Administrative Procedures Law for any new rules it wished to implement where no method for allocation of an assessment shortfall resulting from a hospital closing mid-fiscal year had been set forth, and DOM's implementation of a new rule regarding the Hospital Assessment was beyond its power and could not stand. St. Dominic-Jackson Mem. Hosp. v. Miss. Division of Medicaid, — So. 3d —, 2020 Miss. App. LEXIS 638 (Miss. Ct. App. Nov. 24, 2020).

§ 43-13-145. Assessment levied upon health care facilities; keeping of records; collection of assessments; effect of delinquency in payment [Subsections (4) and (10) through (15) repealed effective July 1, 2024].

JUDICIAL DECISIONS

2. Calculation of Hospital Assessment.

Chancery court erred in upholding a decision by the Mississippi Division of Medicaid (DOM) in calculating the statutorily imposed annual hospital assessment for the fiscal year 2017 because DOM was responsible for seeking approval from the Governor and adhering to the Administrative Procedures Law for any new rules it wished to implement where no method for allocation of an assessment shortfall resulting from a hospital closing mid-fiscal year had been set forth, and DOM's implementation of a new rule regarding the Hospital Assessment was beyond its power and could not stand. St. Dominic-Jackson Mem. Hosp. v. Miss. Division of Medicaid, — So. 3d —, 2020 Miss. App. LEXIS 638 (Miss. Ct. App. Nov. 24, 2020).

CHAPTER 21.
YOUTH COURT

DISPOSITION

§ 43-21-603. Disposition hearing procedure.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.

Youth court properly adjudicated a child as abused and neglected under the doctrine of anticipatory neglect, found that reunification efforts were not necessary, and approved a permanency plan of termination of parental rights and adoption because aggravated circumstances existed regarding the treatment of the child's siblings by her parents, there was no statutory requirement that a motion be made, orally or in writing, prior to a youth court's finding of aggravated circumstances, the mother entered a plea of no contest to the allegations against the other two siblings, and the youth court had statutory authority to make such a determination at the disposition hearing. K.F.M. v. Jackson Cty. Youth Court (In the Interest of K.M.), — So. 3d —, 2020 Miss. App. LEXIS 663 (Miss. Ct. App. Dec. 1, 2020).

TITLE 47.

PRISONS AND PRISONERS; PROBATION AND PAROLE

CHAPTER 7.

PROBATION AND PAROLE

PROBATION AND PAROLE LAW

§ 47-7-3. Parole of prisoners; conditions for eligibility; determination of tentative hearing date.

JUDICIAL DECISIONS

8. Miscellaneous.

Circuit court correctly determined that defendant was ineligible for parole because the Mississippi Supreme Court clearly resolved the exact issue presented on appeal in Fogleman v. State, 283 So. 3d 685 (Miss. 2019), defendant pled guilty to attempted murder, which was listed as a crime of violence, and whether the decision in Fogleman should be overruled was a decision reserved solely for the Supreme Court. Gava-Hudson v. State, — So. 3d —, 2021 Miss. App. LEXIS 39 (Miss. Ct. App. Jan. 26, 2021).

§ 47-7-34. Postrelease supervision program.

JUDICIAL DECISIONS

5. Propriety of particular sentences.

Circuit court acted appropriately in sentencing defendant to a term of ten years in custody with four years suspended, following defendant's conviction for shooting into a dwelling house, because the sentence did not exceed the maximum statutory penalty, and, although defendant was placed on five years of supervised probation, those years were not included in the calculation of the sentence. Dorsey v. State, — So. 3d —, 2021 Miss. App. LEXIS 55 (Miss. Ct. App. Feb. 2, 2021).

TITLE 57.

PLANNING, RESEARCH AND DEVELOPMENT

Chapter 1. Mississippi Development Authority. 57-1-1

CHAPTER 1.

MISSISSIPPI DEVELOPMENT AUTHORITY

Rental Assistance Grant Program. 57-1-521

RENTAL ASSISTANCE GRANT PROGRAM

Sec.

57-1-521. Rental Assistance Grant Program established; definitions; purpose; program terms and conditions; Rental Assistance Grant Program Fund created; unobligated monies.

§ 57-1-521. Rental Assistance Grant Program established; definitions; purpose; program terms and conditions; Rental Assistance Grant Program Fund created; unobligated monies

(1) As used in this section, the following terms shall have the meanings ascribed unless the context otherwise requires:

(a) "COVID-19" means the Coronavirus Disease 2019.

(b) "CARES Act" means the Coronavirus Aid, Relief, and Economic Security Act.

(c) "MDA" means the Mississippi Development Authority.

(d) "Eligible rental business" means a for-profit or not-for-profit corporation, a limited liability company, a partnership or a sole proprietorship that (i) is the owner, lessor, or sublessor of a dwelling unit, commercial building or the building of which it is a part in the State of Mississippi, and (ii) filed Mississippi taxes for tax year 2018 or 2019, or, for an eligible business formed on or after January 1, 2020, intends to file Mississippi taxes for tax year 2020, unless exempt under Section 27-7-29, Section 27-13-63 or other applicable provision of law.

(e) "Lost rental income" means all payments that were due under a rental agreement to be made to an eligible rental business between March 1, 2020, and December 30, 2020, that were not paid due to the business disruption effects of the public health emergency and eviction moratoria.

(2)(a) The Legislature finds and declares that the public health emergency from COVID-19 has caused increased unemployment and wage insecurity in Mississippi, which has made it difficult for many renters to make their rent payments and puts some at risk of becoming homeless, which could mean greater risk of contracting and spreading the coronavirus

for families. Further, the Legislature finds and declares that increasing nonpayment of rent is creating a crisis for independent rental businesses and a rising danger of foreclosures. The Legislature further finds and declares that the federal and state eviction moratoria that began in March 2020, and will extend through December 30, 2020, have put rental businesses at risk of losing income necessary to continue their business operations.

(b) Eligible rental businesses that can demonstrate lost rental income from March 1, 2020, through December 30, 2020, may apply for a grant of up to Thirty Thousand Dollars ($30,000.00) to reimburse for lost rental income resulting from the public health emergency and eviction moratoria.

(3)(a) The MDA shall establish the Rental Assistance Grant Program for the purpose of making grants to eligible rental businesses pursuant to applications submitted under this subsection, to reimburse their lost rental income.

(b) Any eligible rental business desiring to participate in the grant program authorized under this section shall make application for a grant to the MDA in a form satisfactory to the MDA. The application shall include verified documentation, signed under penalty of perjury. The MDA shall not consider applications filed after November 15, 2020. If the MDA determines that allowing applicants to file their applications until November 15, 2020, would not allow the MDA sufficient time to issue all final payments on or before December 14, 2020, the MDA shall set an application deadline before November 15, 2020, to allow the MDA sufficient time to issue all final payments not later than December 14, 2020.

(c) The MDA shall not disburse any funds appropriated under this section to any recipient without first: (a) making an individualized determination that the reimbursement sought is, in the MDA's independent judgment, for necessary expenditures incurred due to the public health emergency with respect to COVID-19 as provided under Section 601(d) of the federal Social Security Act as added by Section 5001 of the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and its implementing guidelines, guidance, rules, regulations and/or other criteria, as may be amended or supplemented from time to time, by the United States Department of the Treasury; and (b) determining that the recipient has not received and will not receive reimbursement for the expense in question from any source of funds, including insurance proceeds, other than those funds provided under Section 601 of the federal Social Security Act as added by Section 5001 of the CARES Act. In addition, the MDA shall ensure that all funds appropriated under this section are disbursed in compliance with the Single Audit Act (31 USC Sections 7501-7507) and the related provisions of the Uniform Guidance, 2 CFR Section 200.303 regarding internal controls, Sections 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

The use of grants shall further be subject to audit by the Mississippi Office of the State Auditor. A rental business found to be fully or partially

noncompliant with grant requirements shall return to the state all or a portion of the grant monies received. Applicants shall confirm their understanding of these terms.

(d) The MDA shall develop procedures, guidelines and application forms to govern the administration of the grant program authorized under this section.

(4) The grant program authorized under this section shall be subject to the following terms and conditions:

(a) The maximum amount of a grant that may be provided to an eligible rental business is Thirty Thousand Dollars ($30,000.00). Eligible commercial businesses shall not receive more than twenty-five percent (25%) of the total funds appropriated under this program.

(b) An eligible rental business that accepts a grant under this section shall consider any rental payments due under a rental agreement at the property for which the grant is made as having been paid in full through December 30, 2020. An eligible rental business that accepts a grant under this section may not evict a tenant from the dwelling unit for nonpayment of rent that accrued between March 1, 2020, and December 30, 2020. Acceptance of grant funds does not prohibit an eligible rental business from beginning eviction proceedings for lawful purposes other than nonpayment of rent that accrued between March 1, 2020, and December 30, 2020, when allowed by law or regulation.

(c) Grants awarded under this section shall be protected from creditors.

(5) There is created a special fund in the State Treasury, to be known as the "Rental Assistance Grant Program Fund," from which the grants authorized by this section shall be disbursed by the MDA. All monies shall be disbursed from the fund in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act. If on December 15, 2020, there are unobligated monies in the fund, the MDA shall transfer such monies to the Unemployment Compensation Fund.

HISTORY: Laws, 2020, ch. 503, § 3, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 503, § 1, effective October 9, 2020, provides:

"SECTION 1. This act shall be known and may be cited as the 'Rental Assistance Grant Program.'"

Laws of 2020, ch. 503, § 2, effective October 9, 2020, provides:

"SECTION 2. Upon the effective date of this act, the State Fiscal Officer shall transfer to the Rental Assistance Grant Program Fund created by Section 2 of this act out of the Budget Contingency Fund (Fund Number 6117700000).....$ 20,000,000.00."

Laws of 2020, ch. 503, § 5, effective October 9, 2020, provides:

"Section 4 of this act shall take effect and be in force from and after January 1, 2020, and the remainder of this act shall take effect and be in force from and after its passage [October 9, 2020]."

TITLE 63.

MOTOR VEHICLES AND TRAFFIC REGULATIONS

CHAPTER 3.

TRAFFIC REGULATIONS AND RULES OF THE ROAD

ARTICLE 9.

ACCIDENTS AND REPORTS.

§ 63-3-401. Duties of driver involved in accident resulting in personal injury or death; offenses and penalties.

JUDICIAL DECISIONS

3. Illustrative cases.

Truck driver was not at fault in an auto accident when a motorist who was passing the truck struck an oncoming vehicle on a highway. Furthermore, the truck driver's failure to stop after the accident in no way proximately caused or contributed to the accident or was evidence of the truck driver's guilt. Owens v. Brooks, — So. 3d —, 2021 Miss. App. LEXIS 24 (Miss. Ct. App. Jan. 12, 2021).

ARTICLE 11.

RESTRICTIONS ON SPEED; USE OF RADAR.

§ 63-3-505. Conditions under which speed must be decreased.

JUDICIAL DECISIONS

1. In general.

Truck driver was not at fault in an auto accident when a motorist who was passing the truck struck an oncoming vehicle on a highway because the truck driver was not required to slow down to let the motorist pass the truck driver. Even assuming that the accident created a special hazard, the truck driver's failure to slow down after the accident occurred in no way caused or contributed to the accident or exhibited negligence by the truck driver. Owens v. Brooks, — So. 3d —, 2021 Miss. App. LEXIS 24 (Miss. Ct. App. Jan. 12, 2021).

ARTICLE 13.

DRIVING ON RIGHT SIDE OF ROADWAY: OVERTAKING AND PASSING; FOLLOWING.

§ 63-3-617. Driving in center of highway; refusal to turn to right to allow overtaking vehicle to pass.

JUDICIAL DECISIONS

2. Liability for auto accident.

Truck driver was not at fault in an auto accident when a motorist who was passing the truck struck an oncoming vehicle on a highway because the truck driver had no duty to pull off the roadway. The fact that the truck driver may have had room to pull over did not create a duty when none existed and, given the steep drop-off to the right and the driver's heavy load, it could not be said that the truck driver failed to exercise reasonable care by not pulling onto the partially paved shoulder. Owens v. Brooks, — So. 3d —, 2021 Miss. App. LEXIS 24 (Miss. Ct. App. Jan. 12, 2021).

TITLE 69.

AGRICULTURE, HORTICULTURE, AND ANIMALS

Chapter 55. Mississippi Agriculture Stabilization Act. 69-55-1

CHAPTER 55.

MISSISSIPPI AGRICULTURE STABILIZATION ACT.

Sec.

69-55-1. Short title.
69-55-3. Establishment of the Poultry Farmer Stabilization Grant Program, the Mississippi Supplemental CFAP Grant Program, and the Sweet Potato Farm Sustainment Grant Program; purpose.
69-55-5. Department of Agriculture to implement regulations and develop procedures for administration and eligibility requirements of programs; administrative expenses; contract with entity to administer programs.
69-55-7. Creation of the Poultry Farmer Stabilization Grant Program Fund, the Mississippi Supplemental CFAP Grant Program Fund, and the Sweet Potato Farm Sustainment Grant Program Fund; use of funds; unexpended monies.
69-55-9. Report on utilization of program.

§ 69-55-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Agriculture Stabilization Act."

HISTORY: Laws, 2020, ch. 498, § 2, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides: "SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 69-55-3. Establishment of the Poultry Farmer Stabilization Grant Program, the Mississippi Supplemental CFAP Grant Program, and the Sweet Potato Farm Sustainment Grant Program; purpose.

In response to the COVID-19 pandemic, the Mississippi Department of Agriculture and Commerce shall establish and administer the following grant programs:

(a) The Poultry Farmer Stabilization Grant Program for the purpose of assisting Mississippi poultry farmers who have experienced a loss of at least one (1) full flock of production due to the COVID-19 pandemic;

(b) The Mississippi Supplemental CFAP Grant Program for the purpose

of assisting commodity producers who qualified for the USDA's Coronavirus Food Assistance Program (CFAP); and

(c) The Sweet Potato Farm Sustainment Grant Program for the purpose of providing grants to sweet potato farmers to cover expenses due to the COVID-19 pandemic.

HISTORY: Laws, 2020, ch. 498, § 3, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides: "SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 69-55-5. Department of Agriculture to implement regulations and develop procedures for administration and eligibility requirements of programs; administrative expenses; contract with entity to administer programs.

(1) The Department of Agriculture and Commerce shall implement regulations and develop procedures to govern the administration and eligibility requirements of the programs established in this chapter.

(2) The department may:

(a) Retain up to three percent (3%) of the funds appropriated to the programs established in this chapter to pay reasonable expenses incurred in the administration of the programs.

(b) Contract with an entity to administer the programs established in this chapter. When contracting with the entity to administer the programs, the department shall be exempt from Section 27-104-7(2)(g) requiring approval by the Public Procurement Review Board.

HISTORY: Laws, 2020, ch. 498, § 4, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides: "SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 69-55-7. Creation of the Poultry Farmer Stabilization Grant Program Fund, the Mississippi Supplemental CFAP Grant Program Fund, and the Sweet Potato Farm Sustainment Grant Program Fund; use of funds; unexpended monies.

(1)(a) There is created a special fund in the State Treasury, to be known

as the "Poultry Farmer Stabilization Grant Program Fund," from which the grants authorized under the Poultry Farmer Stabilization Grant Program shall be disbursed by the Department of Agriculture and Commerce;

(b) There is created a special fund in the State Treasury, to be known as the "Mississippi Supplemental CFAP Grant Program Fund," from which the grants authorized under the Mississippi Supplemental CFAP Grant Program shall be disbursed by the Department of Agriculture and Commerce; and

(c) There is created a special fund in the State Treasury, to be known as the "Sweet Potato Farm Sustainment Grant Program Fund," from which the grants authorized under the Sweet Potato Farm Sustainment Grant Program shall be disbursed by the Department of Agriculture and Commerce.

(2)(a) All monies shall be disbursed from the funds created in subsection (1) of this section in compliance with the guidelines, guidance, rules, regulations or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act. However, unexpended amounts of any monies unrelated to the Coronavirus Relief Fund, whether appropriated by the Legislature or donated by any public or private entity, remaining in the funds at the end of a fiscal year shall not lapse into the Budget Contingency Fund or the State General Fund, and any investment earnings or interest earned on amounts in the grant program funds shall be deposited to the credit of the respective grant program fund; and

(b) If on December 15, 2020, there are unexpended Coronavirus Relief Fund monies remaining in any fund created in this section, those funds shall be transferred by the State Fiscal Officer into the Unemployment Compensation Fund no later than December 30, 2020.

(3) The use of funds allocated under this program shall be subject to audit by the United States Department of the Treasury's Office of Inspector General and the Mississippi Office of the State Auditor. Each person receiving funds under these programs found to be fully or partially noncompliant with the requirements in this chapter shall return to the state all or a portion of the funds received.

HISTORY: Laws, 2020, ch. 498, § 5, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — The reference to "funds allocated under this program" in subsection (3) should probably be to "funds allocated under these programs." The section is set out above as enacted by Chapter 498, Laws of 2020.

Laws of 2020, ch. 498, § 1, effective October 9, 2020, provides:

"SECTION 1. (1) Upon the effective date of this act, the State Fiscal Officer shall transfer to the 'Poultry Farmer Stabilization Grant Program Fund' out of the Budget Contingency Fund..... $3,000,000.00.

"(2) Upon the effective date of this act, the State Fiscal Officer shall transfer to the 'Mississippi Supplemental CFAP Grant Program Fund' out of the Budget Contingency Fund ..... $9,500,000.00.

"(3) Upon the effective date of this act, the State Fiscal Officer shall transfer to the 'Sweet Potato Farm Sustainment Grant Program Fund' out of the Budget Contingency

Fund..... $500,000.00."

Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides:

"SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 69-55-9. Report on utilization of program.

The Department of Agriculture and Commerce shall report on the utilization of the programs to the Chair of the Agriculture Committees of the Senate and the House of Representatives, the Lieutenant Governor, the Speaker of the House and the Governor by December 15, 2020. At a minimum, the report shall contain:

(a) The name of each grant participant; and

(b) The total amount of payment received by each participant.

HISTORY: Laws, 2020, ch. 498, § 6, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides:

"SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

TITLE 71.

LABOR AND INDUSTRY

CHAPTER 3.

WORKERS' COMPENSATION

GENERAL PROVISIONS

§ 71-3-3. Definitions.

JUDICIAL DECISIONS

23. Injury, generally.

24. — Caused by co-employees.

Mississippi Gaming Commission was entitled to summary judgment under the exclusive remedy provision of the Mississippi Workers' Compensation Act, Miss. Code Ann. § 71-3-1 et seq., because a finder of fact could not have concluded that a certified firearms instructor with the Mississippi Gaming Commission possessed actual intent to injure the decedent when the instructor shot and killed the decedent, who was also an instructor with the Commission, during a firearm-training exercise. In the Estate of Gorman v. State, 307 So. 3d 421, 2020 Miss. LEXIS 506 (Miss. 2020).

§ 71-3-7. Liability for payment of compensation.

JUDICIAL DECISIONS

43. Liability of contractors and subcontractors.

Sheriff's department was not a statutory employer because the county contracted directly with a health care provider to provide comprehensive medical care for inmates and neither the county, nor the sheriff's department had a contract with anyone else when a nurse who was hired by the provider was injured in the course of the nurse's duties at a detention center and the provider did not carry workers' compensation coverage at the time. Rollins v. Hinds Cty. Sheriff's Dep't & Miss. Pub. Entities' Workers' Cpmpensation Trust, 306 So. 3d 702, 2020 Miss. LEXIS 482 (Miss. 2020).

§ 71-3-15. Medical services and supplies.

JUDICIAL DECISIONS

8. Patient-physician communication privilege.

Correspondence between employer's counsel and claimant's treating physician was not an impermissible non-consensual ex parte communication because the claimant's counsel was copied on the correspondence requesting clarification of the physician's opinions, but made no objection to the communication or the physician's response in a letter report. Therefore, the administrative judge and the Mississippi Workers' Compensation Commission did not err in considering the physician's letter report. Jones v. Univ. of Miss. Med. Ctr., — So. 3d —, 2021 Miss. App. LEXIS 7 (Miss. Ct. App. Jan. 5, 2021).

§ 71-3-17. Compensation for disability.

JUDICIAL DECISIONS

11. Amount of recovery.

In a case in which the claimant was awarded permanent partial disability benefits for his work-related injury, the Mississippi Workers' Compensation Commission's award of $81.38 per week for 450 weeks was proper as the claimant sustained a 20% loss of wage-earning capacity compared to his stipulated pre-injury average weekly wage; and the Commission's calculations equated to $610.35 x 20% = 122.07 x .6667 = $81.38. Chambers v. Howard Indus., — So. 3d —, 2021 Miss. App. LEXIS 13 (Miss. Ct. App. Jan. 12, 2021).

§ 71-3-53. Continuing jurisdiction of the commission.

JUDICIAL DECISIONS

3. Limitations period, generally.

7. Applicability.

motion to enforce the Workers' Compensation Commission's compromise settlement order was not barred by the one-year statute of limitations in this section, because the claimant did not claim additional benefits or future benefits but only sought to enforce the Commissioner's previous order approving the settlement in which the insurer agreed to pay the benefits the claimant sought to have paid. Cleveland v. Advance Auto Parts, 305 So. 3d 1144, 2020 Miss. LEXIS 441 (Miss. 2020).

§ 71-3-55. Procedure before the commission.

JUDICIAL DECISIONS

3. Evidence.

Correspondence between employer's counsel and claimant's treating physician was not an impermissible non-consensual ex parte communication because the claimant's counsel was copied on the correspondence requesting clarification of the physician's opinions, but made no objection to the communication or the physician's response in a letter report. Therefore, the administrative judge and the Mississippi Workers' Compensation Commission did not err in considering the physician's letter report. Jones v. Univ. of Miss. Med. Ctr., — So. 3d —, 2021 Miss. App. LEXIS 7 (Miss. Ct. App. Jan. 5, 2021).

§ 71-3-59. Costs in proceedings brought without reasonable ground; penalties for pursuit of frivolous claim.

JUDICIAL DECISIONS

1. Penalties or interest.

Workers' Compensation Commission order imposing sanctions on the employer and insurer was reversed where they had at least a colorable legal basis for their appeal, i.e., that septic and HVAC systems were not other apparatus that was specially required by the nature of the claimant's injury. Gamma Healthcare Inc. v. Estate of Grantham, — So. 3d —, 2020 Miss. App. LEXIS 666 (Miss. Ct. App. Dec. 1, 2020).

CHAPTER 5.
UNEMPLOYMENT COMPENSATION

ARTICLE 11.
BENEFITS.

§ 71-5-513. Disqualifications [Repealed effective July 1, 2023].

JUDICIAL DECISIONS

5. Leaving employment without good cause.

Circuit court properly affirmed a decision by the Mississippi Department of Employment Security denying unemployment benefits to an employee because she voluntarily quit her job after five days without good cause—she did not agree with the employer's offer letter—no evidence was provided regarding how the employee's living expenses were impacted by her alleged salary reduction, and, while possibly inappropriate, the employer's comments about the employee's past domestic violence incident did not constitute good cause to leave her employment since the incident was a matter of public record. Patterson v. Miss. Dep't of Empl. Sec., — So. 3d —, 2021 Miss. App. LEXIS 8 (Miss. Ct. App. Jan. 5, 2021).

TITLE 89.
REAL AND PERSONAL PROPERTY

CHAPTER 1.
LAND AND CONVEYANCES

IN GENERAL

§ 89-1-5. Words of inheritance not necessary.

JUDICIAL DECISIONS

1. In general.

Decedent devised the decedent's home and its furnishings to the decedent's surviving spouse in fee simple and not as a life estate with the remainder to the decedent's nephew because reading the subject provision in the context of the entire will showed that the decedent intended that the spouse inherit the property covered by the provision in fee simple. The plainly stated fee-simple estate devised to the spouse was not diminished by the subsequent confusing alternative devise of a life estate to the spouse with remainder to the nephew. Kendrick v. Warren, — So. 3d —, 2020 Miss. App. LEXIS 673 (Miss. Ct. App. Dec. 8, 2020).

TITLE 91.

TRUSTS AND ESTATES

CHAPTER 5.

WILLS AND TESTAMENTS

§ 91-5-1. Who may execute; signature; attestation.

JUDICIAL DECISIONS

15. Attestation.

16. —Validity; particular circumstances.

Trial court erred by finding in a motion for summary judgment that a purported holographic will of the decedent and a subsequent typewritten will of the decedent were not to be probated because the proponent of the wills created a genuine issue as to whether the wills had been signed and executed by the decedent through the statement by the proponent's former spouse in an affidavit that the spouse had witnessed the decedent sign the wills. Although the proponent was a named beneficiary in the wills, the spouse was not a named beneficiary. Yoakum v. Smith (In re Estate of Yoakum), — So. 3d —, 2021 Miss. App. LEXIS 67 (Miss. Ct. App. Feb. 9, 2021).

§ 91-5-9. Devise to witness void.

JUDICIAL DECISIONS

1. In general.

Trial court erred by finding in a motion for summary judgment that a purported holographic will of the decedent and a subsequent typewritten will of the decedent were not to be probated because the proponent of the wills created a genuine issue as to whether the wills had been signed and executed by the decedent through the statement by the proponent's former spouse in an affidavit that the spouse had witnessed the decedent sign the wills. Although the proponent was a named beneficiary in the wills, the spouse was not a named beneficiary. Yoakum v. Smith (In re Estate of Yoakum), — So. 3d —, 2021 Miss. App. LEXIS 67 (Miss. Ct. App. Feb. 9, 2021).

CHAPTER 7.

EXECUTORS AND ADMINISTRATORS

GENERAL PROVISIONS

§ 91-7-233. What actions survive to executor or administrator.

JUDICIAL DECISIONS

1. In general.

Administrator of decedent's estate stood in decedent's shoes and could prosecute any action that decedent could have prosecuted; therefore, decedent's arbitration agreement was binding on the administrator to the same extent that it was binding on decedent. Bank of Holly Springs v. Puryear ex rel. Estate of Brown, — So. 3d —, 2020 Miss. App. LEXIS 692 (Miss. Ct. App. Dec. 15, 2020).

TITLE 93.

DOMESTIC RELATIONS

CHAPTER 15.

MISSISSIPPI TERMINATION OF PARENTAL RIGHTS LAW

§ 93-15-113. Conduct of hearing for involuntary termination of parental rights; counsel for parent.

JUDICIAL DECISIONS

2. Appointment of counsel.

In a termination of parental rights action, absent a legislative directive to assess an indigent parent's attorney's fees to Covington County, the chancery court did not abuse its legislatively conferred discretion by ordering the Mississippi Department of Child Protection Services to pay the father's attorney's fees, as the chancellor complied with this section in providing the father, an indigent parent, with appointed counsel. Miss. Dep't of Child Prot. Servs. v. Bynum, 305 So. 3d 1158, 2020 Miss. LEXIS 443 (Miss. 2020).

CHAPTER 16.

GRANDPARENTS' VISITATION RIGHTS

§ 93-16-3. Who may petition for visitation rights; when; court in which to file petition.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Attorney fees.
5. Viable relationsihp.

1. In general.

Chancery court properly dismissed a paternal grandmother's petition for visitation because she failed to satisfy the statutory requirements by failing to provide the court with evidence to show that visitation was in the child's best interest. Keasler v. Fowler, — So. 3d —, 2020 Miss. App. LEXIS 654 (Miss. Ct. App. Nov. 24, 2020).

2. Attorney fees.

Chancellor erred by ordering the grandmother to prepay the mother's attorney's fees in advance of the chancellor's hearing the grandmother's petition for visitation rights because the grandmother sought visitation after her son, the children's father, died; and subsection (1) of this statute did not provide for the award of attorney's fees before a hearing. Battise v. Aucoin, — So. 3d —, 2021 Miss. LEXIS 26 (Miss. Feb. 11, 2021).

5. Viable relationsihp.

While the chancery court erred in granting a maternal grandmother visitation—she did not establish a "viable relationship" with that child since the child was not yet one year old when her contact with the grandmother ceased—it properly granted with the parents' two oldest children and did not award excessive visitation because she had an "viable relationship" with them, the award of one weekend per month, 10 days in the summer, and no other holidays was not excessive, and, while the schedule might grant the grandmother more overnight visits than before falling out of favor with the parents, her only visitation was court-ordered. Greer v. Akers, — So. 3d —, 2021 Miss. App. LEXIS 41 (Miss. Ct. App. Jan. 26, 2021).

TITLE 95.

TORTS

CHAPTER 5.

TRESPASS

§ 95-5-10. Cutting trees without consent of owner.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

2. Statute of limitations.

Grantor's claim for the value of the trees cut was not time-barred because the amended complaint adding the claim was filed within the three-year limitations period that began running when the timber was cut; the Mississippi catch-all limitations provision applied to the grantor's claim for actual damage for the timber cutting. Alexander v. Musgrove, — So. 3d —, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. Jan. 5, 2021).

TITLE 97.

CRIMES

CHAPTER 1.

CONSPIRACY, ACCESSORIES AND ATTEMPTS

§ 97-1-5. Accessories after the fact; punishment.

JUDICIAL DECISIONS

ANALYSIS

2. Evidence; generally.
3. —Sufficiency.
4. Instructions.

2. Evidence; generally.

Circuit court did not err in admitting into evidence an individual's murder conviction because the State of Mississippi used the murder conviction only to show that defendant assisted the individual when defendant handed the individual the keys to defendant's car as a way to escape after the individual shot and killed the victim. To prove that defendant was an accessory after the fact to murder, the admission of the individual's murder conviction was necessary. Robinson v. State, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

3. —Sufficiency.

Jury's guilty verdict for accessory after the fact to murder was not contrary to the weight of the evidence because a rational juror could conclude that a murder had occurred, and defendant, knowing that a murder had occurred, thereafter knowingly assisted those responsible for the murder to escape or avoid arrest; evidence was presented that defendant assisted with concealing or disposing of physical evidence used in the crime, and he admitted that he assisted one of shooters. Thames v. State, — So. 3d —, 2021 Miss. LEXIS 17 (Miss. Feb. 4, 2021).

Evidence supported defendant's conviction for being an accessory after the fact to a murder because eyewitnesses testified that, after an individual shot the victim in a gang dispute, defendant, who was a police officer, willingly threw the individual defendant's car keys and the individual then escaped in defendant's car. Witnesses also testified that they personally knew that defendant was a member of a gang, and the State of Mississippi presented evidence of defendant's tattoos, which were known gang signs, and of defendant in a gang shirt. Robinson v. State, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

4. Instructions.

Circuit court did not abuse its discretion in giving the State of Mississippi's flight instruction in defendant's trial for being an accessory after the fact to a murder and for participation in gang activity because, after an individual shot the victim in a gang dispute, defendant, who was a police officer, willingly threw the individual defendant's car keys and the individual then escaped in defendant's car. Thus, there was clear probative value of defendant's subsequent flight from the crime scene without rendering assistance. Robinson v. State, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

CHAPTER 3.

CRIMES AGAINST THE PERSON

§ 97-3-2. Crimes of violence defined.

JUDICIAL DECISIONS

1. In general.

Circuit court correctly determined that defendant was ineligible for parole because the Mississippi Supreme Court clearly resolved the exact issue presented on appeal in Fogleman v. State, 283 So. 3d 685 (Miss. 2019), defendant pled guilty to attempted murder, which was listed as a crime of violence, and whether the decision in Fogleman should be overruled was a decision reserved solely for the Supreme Court. Gava-Hudson v. State, — So. 3d —, 2021 Miss. App. LEXIS 39 (Miss. Ct. App. Jan. 26, 2021).

§ 97-3-15. Homicide; justifiable homicide; use of defensive force; duty to retreat.

JUDICIAL DECISIONS

7. Instructions; generally.

8. —Self-defense.

Trial court committed reversible error in denying defendant's proposed jury instructions regarding this section rather than giving the question of fact regarding the initial aggressor to the jury for their determination because defendant provided at the very least a meager evidentiary basis for the jury to consider who the initial aggressor was. Defendant was not engaged in criminal activity by asking the victim to leave his home, defendant and his son testified that the victim jumped up from his chair, and they believed he was going to attack defendant. McNeer v. State, 307 So. 3d 508, 2020 Miss. App. LEXIS 668 (Miss. Ct. App. 2020).

Trial court did not err by refusing to give a jury instruction on the castle doctrine because at no point during his three recorded statements did defendant indicate that the victim had attempted to forcibly enter his vehicle or to remove him from the vehicle, but rather stated that he voluntarily exited his vehicle after the victim approached. In addition, defendant stated that the victim did not begin acting physically aggressive until both were standing outside of the vehicle. Pulliam v. State, — So. 3d —, 2020 Miss. App. LEXIS 669 (Miss. Ct. App. Dec. 8, 2020).

§ 97-3-35. Homicide; killing without malice in the heat of passion.

JUDICIAL DECISIONS

4. Self-defense.

Evidence was sufficient to overcome the presumption that defendant shot the victim in reasonable self-defense because no dispute existed that defendant shot the victim and later confessed his actions to the police, defendant admitted that he exited his vehicle because the victim's actions had angered him, a physician testified that the victim was at least three feet away when defendant shot him, and after the shooting defendant fled the crime scene. Pulliam v. State, — So. 3d —, 2020 Miss. App. LEXIS 669 (Miss. Ct. App. Dec. 8, 2020).

CHAPTER 5.

OFFENSES AFFECTING CHILDREN

§ 97-5-39. Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

4. Evidence.

Sufficient evidence was presented to support defendant's conviction for felony starvation of a minor child because, according to defendant's own statements to investigators, defendant was responsible for feeding the undernourished child of defendant's paramour from when defendant, the paramour, and the child began living together and reasonable minds could have concluded that the child's malnourishment continued and worsened while under defendant's care. Hampton v. State, — So. 3d —, 2021 Miss. LEXIS 3 (Miss. Jan. 21, 2021).

Insufficient evidence was presented to support defendant's felonious burning of a minor child conviction because the State of Mississippi failed to prove that defendant intentionally, knowingly, or recklessly caused the burns to the body of the child of defendant's paramour, either as a principal or an accomplice. That defendant failed to seek medical care and offered no explanation for what occurred in defendant's household was not proof or evidence that defendant or anyone else knowingly or recklessly caused the child's burn injury. Hampton v. State, — So. 3d —, 2021 Miss. LEXIS 3 (Miss. Jan. 21, 2021).

CHAPTER 9.

OFFENSES AFFECTING ADMINISTRATION OF JUSTICE

ARTICLE 1.

IN GENERAL.

§ 97-9-72. Fleeing or eluding a law enforcement officer in a motor vehicle; felonies; sanctions; defenses.

JUDICIAL DECISIONS

ANALYSIS

3. Indictment.
5. Sentence.

3. Indictment.

Evidence was sufficient to support defendant's conviction of felony evasion because there was undisputed evidence that when the officer activated his lights and siren defendant was given a signal to stop, defendant willfully failed to obey the officer's direction to stop and sped away, and when the officer witnessed two undisputed traffic violations—speeding and failure to display a license—he was acting in the lawful performance of his duty and with reasonable suspicion to believe that defendant had committed a crime. Fogleman v. State, — So. 3d —, 2021 Miss. App. LEXIS 17 (Miss. Ct. App. Jan. 12, 2021).

Evidence was sufficient to show that a victim suffered serious bodily injury because she testified to suffering from a permanent injury as a result of the collision for which she still experienced physical symptoms and for which she had to use prescription medication. Fogleman v. State, — So. 3d —, 2021 Miss. App. LEXIS 17 (Miss. Ct. App. Jan. 12, 2021).

5. Sentence.

Jury was properly instructed on the element

of serious bodily injury because the jury had clearly been properly instructed on the requisite elements of the crime including the element of "serious bodily injury," in one instruction and they were also given a definition of that term in another instruction. Fogleman v. State, — So. 3d —, 2021 Miss. App. LEXIS 17 (Miss. Ct. App. Jan. 12, 2021).

CHAPTER 17.

CRIMES AGAINST PROPERTY

IN GENERAL

§ 97-17-33. Burglary; breaking and entering building other than dwelling; railroad car; vessels; automobiles.

JUDICIAL DECISIONS

6. Evidence, generally.

7. —Of breaking and entering.

Evidence was sufficient to support defendant's conviction of burglary of a dwelling because it showed that the air conditioning unit had been moved, the jewelry kept close to it was missing, defendant admitted to reaching in the window and taking the jewelry, and stolen jewelry was recovered from defendant. Benthall v. State, — So. 3d —, 2021 Miss. App. LEXIS 69 (Miss. Ct. App. Feb. 9, 2021).

CHAPTER 23.

OFFENSES AFFECTING TRADE, BUSINESS AND PROFESSIONS

§ 97-23-19. Embezzlement; by agents, bailees, trustees, servants and persons generally.

JUDICIAL DECISIONS

ANALYSIS

5. Proof.
7. Sentencing.

5. Proof.

State of Mississippi presented sufficient evidence to find defendant guilty of embezzling over time an amount in excess of $25,000 because the evidence and testimony showed that defendant wrongfully converted the funds of defendant's employer to defendant's own use, that the funds were entrusted to defendant by the nature of defendant's position at the employer, and that defendant's employer paid the amount of the express checks that were issued and cashed by defendant as a result of defendant's false repair orders for the employer's trucks. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 57 (Miss. Ct. App. Feb. 2, 2021).

7. Sentencing.

Following defendant's conviction for embezzling an amount in excess of $25,000, the trial court did not abuse its discretion by sentencing defendant to serve 20 years in the custody of the Mississippi Department of Corrections and by ordering defendant to pay restitution because the term of the sentence which the court imposed was within the statutorily prescribed limits and the evidence supported the amount of the award of restitution for the funds which defendant embezzled from defendant's employer. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 57 (Miss. Ct. App. Feb. 2, 2021).

CHAPTER 33.

GAMBLING AND LOTTERIES

IN GENERAL

§ 97-33-1. Betting, gaming or wagering; exception from prohibition; penalty.

JUDICIAL DECISIONS

6. Site proposal.

Denial of a gaming site application was proper after the Mississippi Gaming Commission (MGC) found that applicant's proposed gaming site failed to meet the governing statutory and regulatory requirements under Miss. Code Ann. § 97-33-1 (Rev. 2014) in the first instance and 13 Mississippi Administrative Code Part 2, Rule 1.4(d) in the second. RW Dev., LLC v. Miss. Gaming Comm'n, 307 So. 3d 404, 2020 Miss. LEXIS 485 (Miss. 2020).

CHAPTER 37.

WEAPONS AND EXPLOSIVES

GENERAL PROVISIONS

§ 97-37-5. Unlawful for convicted felon to possess any firearms, or other weapons or devices; penalties; exceptions.

JUDICIAL DECISIONS

9. Sufficient evidence.

Sufficiency and weight of the evidence supported defendant's conviction for possession of a weapon by a felon because, on top of defendant's many admissions to possessing the charged gun, a witness gave eyewitness testimony that she saw defendant with the black and brown pistol; he pointed the pistol at her and, after sexually assaulting her, left the gun with her; in text messages between them, defendant mentioned the pistol he loaned the victim; and he made repeated pleas to get the gun back. Williams v. State, 305 So. 3d 1122, 2020 Miss. LEXIS 445 (Miss. 2020).

Evidence was sufficient to convict defendant of possession of a weapon by a convicted felon because defendant had the opportunity and motive to dispose of the weapon; the residents of the premises denied ownership of the weapon; and an additional handgun magazine was found next to defendant at the time of his arrest, and the additional handgun magazine fit the recovered pistol. Kelly v. State, 305 So. 3d 1134, 2020 Miss. LEXIS 444 (Miss. 2020).

§ 97-37-29. Shooting into dwelling house.

JUDICIAL DECISIONS

2. Sentence proper.

Circuit court acted appropriately in sentencing defendant to a term of ten years in custody with four years suspended, following defendant's conviction for shooting into a dwelling house, because the sentence did not exceed the maximum statutory penalty, and, although defendant was placed on five years of supervised probation, those years were not included in the calculation of the sentence. Dorsey v. State, — So. 3d —, 2021 Miss. App. LEXIS 55 (Miss. Ct. App. Feb. 2, 2021).

CHAPTER 44.

MISSISSIPPI STREETGANG ACT

§ 97-44-3. Definitions.

JUDICIAL DECISIONS

1. Jury instructions.

Circuit court did not err in defendant's trial for participation in gang activity by failing to instruct the jury on the statutory definitions obtained in the Mississippi Streetgang Act, Miss. Code Ann. § 97-44-1 et seq., because there was no requirement that the Mississippi Streetgang Act's definitions were to be incorporated into jury instructions. Robinson v. State, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

§ 97-44-19. Penalties for criminal street gang activity.

JUDICIAL DECISIONS

ANALYSIS

1. Jury instructions.
3. Evidence sufficient.

1. Jury instructions.

Circuit court did not abuse its discretion in giving the State of Mississippi's flight instruction in defendant's trial for being an accessory after the fact to a murder and for participation in gang activity because, after an individual shot the victim in a gang dispute, defendant, who was a police officer, willingly threw the individual defendant's car keys and the individual then escaped in defendant's car. Thus, there was clear probative value of defendant's subsequent flight from the crime scene without rendering assistance. Robinson v. State, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

Circuit court did not err in defendant's trial for participation in gang activity by failing to instruct the jury on the statutory definitions obtained in the Mississippi Streetgang Act, Miss. Code Ann. § 97-44-1 et seq., because there was no requirement that the Mississippi Streetgang Act's definitions were to be incorporated into jury instructions. Robinson v. State, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

3. Evidence sufficient.

Evidence supported defendant's conviction for participation in gang activity because eyewitnesses testified that, after an individual shot the victim in a gang dispute, defendant, who was a police officer, willingly threw the individual defendant's car keys and the individual then escaped in defendant's car. Witnesses also testified that they personally knew that defendant was a member of a gang, and the State of Mississippi presented evidence of defendant's tattoos, which were known gang signs, and of defendant in a gang shirt. Robinson v. State, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

TITLE 99.

CRIMINAL PROCEDURE

CHAPTER 1.

GENERAL PROVISIONS; TIME LIMITATIONS; COSTS

§ 99-1-7. Time limitation on prosecutions; commencement of prosecution.

JUDICIAL DECISIONS

1. In general.

Trial court properly dismissed a father's malicious-prosecution claim because none of the evidence he submitted amounted to the commencement of a criminal proceeding; while the trial court used a statutory definition to define the initiation of a criminal proceeding, there was no error because such finding was supported by caselaw. Wilbourn v. Wilbourn, — So. 3d —, 2021 Miss. LEXIS 16 (Miss. Feb. 4, 2021).

CHAPTER 13.

INSANITY PROCEEDINGS

§ 99-13-11. Mental examination of person charged with felony; cost.

JUDICIAL DECISIONS

2. Grounds for appointment of examiner.

Although the trial court initially found that defendant was incompetent to stand trial, following a second competency hearing, the court found that defendant was competent to stand trial after receiving treatment. Furthermore, after defendant withdrew an insanity defense, there was no evidence or reasonable grounds that the court should have sua sponte ordered a competency hearing on the first day of trial based on defendant's demeanor at trial as defendant actively participated in the proceedings and engaged in discussions with defendant's counsel. Dorsey v. State, — So. 3d —, 2021 Miss. App. LEXIS 55 (Miss. Ct. App. Feb. 2, 2021).

CHAPTER 17.

TRIAL

§ 99-17-9. Trial in the absence of accused.

JUDICIAL DECISIONS

5. Particular circumstances.

Trial court did not abuse its discretion by denying defendant's motion for a continuance and proceeding in absentia because the record was clear that defendant was aware of he trial date, made preparations for trial, and failed to explain her absence to her attorney of the trial court. Benthall v. State, — So. 3d —, 2021 Miss.

App. LEXIS 69 (Miss. Ct. App. Feb. 9, 2021).

CHAPTER 37.

RESTITUTION TO VICTIMS OF CRIMES

§ 99-37-3. Imposition and amount of restitution.

JUDICIAL DECISIONS

2. Illustrative cases.

Following defendant's conviction for embezzling an amount in excess of $25,000, the trial court did not abuse its discretion by sentencing defendant to serve 20 years in the custody of the Mississippi Department of Corrections and by ordering defendant to pay restitution because the term of the sentence which the court imposed was within the statutorily prescribed limits and the evidence supported the amount of the award of restitution for the funds which defendant embezzled from defendant's employer. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 57 (Miss. Ct. App. Feb. 2, 2021).

CHAPTER 39.

POST-CONVICTION PROCEEDINGS

ARTICLE 1.

MISSISSIPPI UNIFORM POST-CONVICTION COLLATERAL RELIEF ACT.

§ 99-39-5. Grounds for relief; time limitations; "biological evidence" defined.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
11. Timeliness.

1. In general.

Because petitioner appealed his conviction, he had to petition the Mississippi Supreme Court for leave to file a postconviction relief motion, which action had be taken within three years of the final decision on petitioner's appeal. Mosley v. State, 307 So. 3d 1261, 2020 Miss. App. LEXIS 678 (Miss. Ct. App. 2020).

11. Timeliness.

In an action for post-conviction relief, appellant failed to offer any evidence to substantiate any extraordinary circumstance that would explain his failure to assert his claims within the statutory three-year time limitation or to overcome the successive-writ bar and thus, the trial court did not abuse its discretion in denying appellant's post-conviction relief motion. Figueroa v. State, — So. 3d —, 2020 Miss. App. LEXIS 642 (Miss. Ct. App. Nov. 24, 2020).

§ 99-39-7. Filing motion in trial court; filing motion to proceed in trial court with supreme court.

JUDICIAL DECISIONS

1. In general.

Because petitioner appealed his conviction, he had to petition the Mississippi Supreme Court for leave to file a postconviction relief motion, which action had be taken within three years of the final decision on petitioner's appeal. Mosley v. State, 307 So. 3d 1261, 2020 Miss. App. LEXIS 678 (Miss. Ct. App. 2020).

§ 99-39-11. Judicial examination of original motion; dismissal; filing answer; court ordered testing of biological evidence.

JUDICIAL DECISIONS

6. Evidentiary hearing.

Allegedly undisclosed information was not exculpatory in the sense that it did not provide evidence that defendant was actually innocent but only that a possible Miranda violation would have supported a motion to suppress defendant's confession; by entering her guilty plea, petitioner waived her claim of a Brady violation and no hearing was required on this issue. Wilkerson v. State, 307 So. 3d 1231, 2020 Miss. App. LEXIS 644 (Miss. Ct. App. 2020).

§ 99-39-23. Conduct of evidentiary hearing; right to counsel; finality of order as bar to subsequent motions; burden of proof; appointment of postconviction counsel in death penalty cases.

JUDICIAL DECISIONS

1. In general.

Although the underlying physical evidence, the medical and autopsy records, remained the same, changes in experts' scientific understanding on issues such as bitemark analysis and shaken baby syndrome might constitute newly discovered evidence, excepting such claims from procedural bars of the Uniform Post-Conviction Collateral Relief Act; the court reversed and remanded for the trial court to conduct an evidentiary hearing and allow petitioner to provide expert testimony on this issue. Wilkerson v. State, 307 So. 3d 1231, 2020 Miss. App. LEXIS 644 (Miss. Ct. App. 2020).

Video evidence containing the alleged Miranda violation was not of such nature that it would be practically conclusive that, if it had been introduced at trial, it would have caused a different result in the conviction or sentence; therefore, the court found no additional exception to the procedural bars based upon the discovery of the videotape by postconviction relief counsel. Wilkerson v. State, 307 So. 3d 1231, 2020 Miss. App. LEXIS 644 (Miss. Ct. App. 2020).

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